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TARIFF AUTHORITY FOR MAJOR PORTS

GNo. 41 **New Delhi,** **24 March 2008**

NOTIFICATION

In exercise of the powers conferred by Section 48 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the application filed by the TM International Logistics Limited (TMILL) for a review of the Order dated 12 October 2007 passed by this Authority, as in the Order appended hereto.

(Brahm Dutt)
Chairman

TARIFF AUTHORITY FOR MAJOR PORTS

Case No. TAMP/55/2007-TMILL

M/s. TM International Logistics Limited - - - Applicant

O R D E R

(Passed on this 17th day of March 2008)

This case relates to an application filed by the TM International Logistics Limited (TMILL) for a review of the Order dated 12 October 2007 passed by the Authority.

2.1. This Authority had passed an Order on 12 October 2007 disposing of the proposal from TMILL for fixation of tariff for the services rendered by the operator at Berth No.12 at Haldia Dock Complex (HDC) of Kolkata Port Trust (KOPT). This Order was notified in the Gazette of India on 25 October 2007. The approved Scale of Rates was to come into force from 24 November 2007.

2.2. The TMILL has been operating the Berth No.12 at the Scale of Rates approved for the landlord port (KOPT) based on a provision in the License Agreement entered between KOPT and TMILL. The estimated financial / cost position showed that the TMILL will be in a net average surplus of 23.55% (after allowing admissible cost and permissible return on capital) at the level of tariff approved for KOPT (which is followed by TMILL) for the period of 2½ years from October 2007 to March 2010. Hence, the tariff for TMILL was fixed by reducing tariff of KOPT by 20% with an allowance for margin of estimation errors, if any.

3.1. With reference to the said tariff Order, the TMILL has filed an application for review on the following issues:

(i). Additions to income from activities not performed by TMILL.

(ii). Revenue share should be considered as an admissible item of cost for the years 2002-03 to 2004-05.

(iii). Admissibility of the following estimated expenses:

- (a). Equipment running cost.
- (b). Lease rent for additional 9000 sq. mtr. of land.
- (c). Insurance cost for the infrastructure to be created in 63,000 sq. mtr. of land.
- (d). Overhead.

(iv). Return on Equity for the years 2002-03 to 2004-05.

(v). Assessed capacity of berth no.12 for the years 2002-03 to 2004-05.

(vi). Consideration of security deposit, sundry debtors and inventory in the working capital.

(vii). Interest cost of Rs.38.61 lakhs for the year 2005-06.

(viii). 10% special rate collected by TMILL.

4.1. When the application of TMILL was being processed for initiating a review proceeding, the operator approached the Hon'ble High Court of Calcutta with a Writ Petition praying, *inter alia*, to direct this Authority to dispose of its review application within a stipulated time and for stay of the operation of the Order dated 12 October 2007.

4.2. The Hon'ble High Court of Calcutta has passed an order on 23 November 2007 directing this Authority to dispose of the review application of TMILL by 31 December 2007 by

passing a reasoned Order after giving an opportunity of hearing to the concerned parties and stayed implementation of the Scale of Rates fixed vide this Authority's Order dated 12 October 2007, subject to the condition that the difference between the rates charged by the Petitioner and the rates fixed by the Authority by notification dated 25 October 2007 will be kept by the petitioners in short term fixed deposits in a Nationalised Bank.

4.3. Since the joint hearing scheduled on 20 December 2007 could not be held no order on the review application could be passed before the stipulated date of 31 December 2007. Therefore, the Hon'ble High Court of Calcutta was moved for extension of time. The Hon'ble High Court passed an Order on 15 January 2008 extending the time limit upto 15 March 2008.

5.1. In accordance with the consultative procedure prescribed, a copy of the review application of the TMILL was forwarded to KOPT and also to the concerned user organisations which were consulted in the original proceedings for their comments. The comments received from the user organisation are summarised below:

Eastern India Shippers Association (EISA)

(i). A fair tariff for various activities should be fixed in accordance with the guidelines.

(ii). All justifiable costs and revenues should be considered by TAMP while fixing tariff.

(iii). Consideration of fair return on investment to enable terminal operator to provide good services is important.

(iv). It is difficult for EISA to reply point-wise as EISA is not privy to various costs and revenues of TMILL.

5.2. The KOPT has furnished its comments on the review application vide its letter dated 6 December 2007. A copy of KOPT letter was forwarded to TMILL as feedback information vide our letter dated 14 December 2007. The TMILL vide its letter dated 20 December 2007 has responded. The points raised by TMILL in its review application, the comments of KOPT and the response of TMILL on the comments of KOPT are tabulated below:

Sl. No.	Points raised by TMILL	Comments of KOPT	Response of TMILL on the comments of KOPT
I.	**Shore handling of fertilizers** An amount of Rs.6.8 crores for the years 2007-08, 2008-09 and 2009-10 has been added on account of loading, transportation and on-board supervision of fertilizers. TMILL does not undertake the above said activities for fertilizers as the customer takes delivery from the hook point. Hence, addition to income on this account appears to be erroneous.	(i). KOPT is not in a position to offer any comments in respect of direct delivery of fertilizers from hook point at Berth No. 12 since such operational records are not maintained in the books of HDC. TMILL should validate its contentions with relevant records. (ii). The customer arranges loading and transfer of import fertiliser cargo in the case of direct delivery from hook point and delivery after transit storage at the port operated berths of HDC.	TMILL has reiterated that it does not undertake the activities of loading, transportation and on-board supervision for fertiliser. In this connection, TMILL has furnished a copy of user's (M/s. TATA Chemicals Limited) certificate dated 14 November 2007 which certifies that it takes direct delivery of its bulk cargo being discharged by vessel's gears. The TMILL does not provide services for on-board supervision and any sort of shore handling.
II.	**Container handling income** Income projections from container handling has been enhanced for	Stating that the port has not authorised handling of container by TMILL at Berth	Citing the Licence Agreement provision at

	the years 2007-08 to 2009-10 by about Rs.3 lakhs per annum on account of on-board supervision charges. Corresponding expenses should also be considered. 80% of the income amount should be considered as expense on this account.	No. 12. KOPT objects to consideration of the income as well as the corresponding expenditure in respect of container handling in the cost statement of TMILL and prescription of tariff.	serial (iii) of Appendix-1 it has argued that it is permitted to handle containerized cargo. Subsequent restriction by KOPT is seen by TMILL as contrary to the terms of the Licence Agreement and not enforceable. TMILL does not agree with KOPT's suggestion that TAMP should not prescribe any tariff for container handling.
III.	**<u>Royalty / Revenue share</u>** Since the license agreement was signed much before July 2003, royalty / revenue share needs to be considered as an item of admissible expenditure for the years 2002-03 to 2004-05 also. In the case of Chennai Container Terminal Limited (CCTL) [No.TAMP/73/2003-CHPT dated 27.11.2003] and in the case of Nhava Sheva International Container Terminal Limited (NSICT) [No.TAMP/15/2005-NSICT dated 7.3.2006] 100% royalty payments have been allowed as admissible expenses. The surpluses for the years 2002-03 to 2006-07 and for the half year April-September 2007 have been adjusted while deciding the tariff. In view of this, TMILL is left with only an amount equal to the return on equity / capital employed for these years, which is much less than the royalty / revenue share paid for those years. Since royalty / revenue share is actually payable and paid, the operations of Berth No. 12 for those years would result in actual loss. Therefore, the royalty / revenue share may be considered as admissible item of cost for the years 2002-03 to 2004-05 also.	(i). TMILL has paid only provisional royalty to KOPT since commencement of TMILL's operations at Berth No.12. The actual amount of royalty payable to KOPT will be determined on completion of the royalty audit. In case of other BOT project at HDC (Berth No. 4A of ISHPL), TAMP has taken a similar stand regarding non-admissibility of royalty as cost upto the year 2004-05. (ii). KOPT has no comments to offer regarding the contention of TMILL that it is left with only an amount equal to the ROE / ROCE which is much less than the royalty / revenue share paid for the years 2002-03 to 2006-07 and for the half year April-September 2007.	TMILL has stated that royalty audits for the years 2002-03 and 2003-04 were completed and the audit reports issued by the independent auditor were submitted to KOPT. Payments of royalty as certified by the independent auditors were reported to have been made to KOPT. Certain observations made in the audit report/s are now under review. TMILL has reiterated its requests to consider royalty paid for the years 2002-03 to 2004-05 as admissible expenditure just as in the case of Chennai Container Terminal Limited (CCTL) and Nhava Sheva International Container Terminal (NSICT).
IV.	**<u>Equipment running cost</u>** For the years 2007-08 onwards, the projected cost of oil and lubricants have been moderated based on the average per tonne cost for the year 2006-07. During 2006-07, TMILL had not handled any limestone or iron ore at Berth No. 12. As per the company's policy and as accepted by the Auditors, the cost of	(i). According to KOPT, the handling of limestone or iron ore may arise after the required infrastructural facilities on 63,000 sq. mtrs of land are created by TMILL. TMILL has not submitted detailed engineering plan to KOPT in	(i). TMILL has reported that it has submitted a detailed engineering plan of 63,000 sq. mtrs. of land to KOPT on 18 December 2007.

	equipments relating to loaders (bulk handling equipments) were not considered at all in Berth No. 12. TMILL has projected bulk cargo (limestone and iron ore) from 2007-08 onwards at Berth No. 12 and it is planned to handle these cargo with own equipments. Hence, the cost of oil and lubricants, repair and maintenance and equipment registration cost with respect to loaders will be incurred for Berth No. 12 operations from 2007-08 onwards. Hence, there will be substantial increase in the overall equipment cost in addition to reasons on account of expiry of warranties of newly purchased equipments. Therefore, moderating the expenses on the basis of actual cost for the year 2006-07 for Berth No. 12 with only normal increase on account of inflation has given erroneous results. It has requested to accept the estimated cost on the basis of detailed calculation submitted with the proposal.	respect of the infrastructural facilities to be created by them on the above said land. Therefore, the KOPT is not in a position to examine the bulk cargo traffic estimated for the year 2007-08. (ii). KOPT is of the view that equipment running cost is dependent on the extent of utilization of different equipment for handling cargo and it may not necessarily depend upon the past utilization of such equipment. The port has qualified its view by stating that TMILL should justify its projected equipment running cost for the future years by furnishing the required estimate of its future equipment utilization based on its projected cargo and handling methodology.	(ii). TMILL has contended that KOPT agrees with its views that equipment running cost may not depend upon past utilisation. It has made a request to review the moderation made and accept the estimated cost worked out on the basis of detailed calculations.
V.	**<u>Plot rent</u>** While submitting the revised proposal, it has been mentioned at para 6 of letter dated 14 February 2007 that the proposed development of infrastructure facilities at Berth No. 12 included development of railway siding and storage yard on land measuring 63,000 sq. mtrs. Out of this area, 54,000 sq. mtrs had already been taken over. The balance area of 9,000 sq. mtrs was allotted on 19 September 2007 and possession was taken on 12 October 2007 after payment of NRNA premium and security deposit. Hence, disallowance of expenditure on lease rental for 9,000 sq. mtrs has lead to erroneous conclusion. This cost needs to be considered and the capital employed for ROCE should include NRNA payment for this land 9,000 sq. mtrs of land is a part of the project for developing infrastructure at Haldia Port and should not be considered in isolation. Out of the 63,000 sq. mtrs of plot, which includes 9,000 sq. mtrs area, rental income from	The following position has been reported by KOPT: (i). Possession of 9,000 sq. mtrs of land has been handed over to TMILL on 3 October 2007. (ii). TMILL has paid Rs.30.06 lakhs, as NRNA premium and Rs.15.03 lakhs as security deposit for allotment of 9,000 sq. mtrs of land. (iii). The monthly rent for 9,000 sq. mtrs of land payable to KOPT is Rs.125280/- subject to annual escalation. (iv). Out of total 63,000 sq. mtrs of land allotted to TMILL, a portion will be required for construction of railway siding. Exact area to be utilized for railway siding and other facilities like storage area would be known only after TMILL submits detailed	As submitted by TMILL, it has furnished detailed plan to KOPT showing areas to be utilised for storage, utility, railway siding, etc. It has furnished a copy of the plan to the Authority.

	44,000 sq. mtrs was considered in the proposal. Only 44,000 sq. mtrs would be available for actual storage, balance being used for railway siding, roads, drainage, utilities etc.	engineering plan and work plan to KOPT. Therefore, KOPT is not in a position to give specific comments regarding TMILL's actual plan of utilization of the additional land of 63,000 sq. mtrs for creation of different facilities.	
VI.	**<u>Insurance</u>** When Berth No. 12 and its back-up area of 14,000 sq. mtrs had been allotted to TMILL in 2002, insurance for the back-up (storage) area had also been taken. This was done to cover damages to the concrete storage area due to operational and accidental reasons. A similar insurance cover for the new yard of 63,000 sq. mtrs (project cost Rs.1953 lakhs) is proposed to be taken. The proposed insurance cost should not be moderated. (A copy of insurance policy for the period 21/03/2007 to 20/03/2008 produced by TMILL shows that the insurance amount is Rs.14 Crores which consists of Rs.11 Crores for Berth and 2.90 Crores for back-up land and 0.10 Crore for fire fighting system with pipelines.)	(i). As per Clause 7.1.(d) of the Licence Agreement, TMILL is required to take insurance coverage for the assets of Berth No. 12 at their cost and expenses. (ii). KOPT is unable to comment on the insurance cost projected by TMILL. KOPT is the view that the TMILL should substantiate the estimated insurance cost with appropriate documents. (iii). The new yard of 63,000 sq. mtrs is yet to be developed with required infrastructure.	Detailed project report for development of 63,000 sq. mtrs. furnished to KOPT is stated to indicate the projected investments. TMILL has contemplated to take insurance cover as soon as the development is completed. Since the Scale of Rates would be valid for three years it has objected to the moderation of insurance cost.
VII.	**<u>Lashing, securing, dunnaging & Unlashing, despatch related services and survey expenses.</u>** The estimated cost has been moderated based on the rates prevailing in the year 2006-07 or prior to that. The normal escalation factor of 5.40% per annum has not been applied while projecting the cost.	In the opinion of KOPT, TMILL may substantiate its claim with documents.	TMILL has stated that it has already furnished copies of documents for the said activities to the Authority. The request of TMILL is for application of normal escalation factor of 5.4%.
VIII.	**<u>Overheads</u>** The proposed infrastructure development at Berth No. 12 of more than Rs.20 Crores should have been taken into consideration while moderating the estimated overhead for the years 2007-08 to 2009-10. Factors like cost of running and maintenance of this infrastructure facility which would necessarily increase the activities at Berth should be taken into account. Reference may be made to the projected revenue compared to actuals of previous years. The activities like shore handling of lime stone and steel export are partly	The KOPT is not in a position to comment on the contention of the TMILL in this regard on the ground that the operator is yet to submit detailed engineering plan regarding creation of infrastructure facilities at the additional land.	As brought out earlier, TMILL has reportedly submitted detailed plan to KOPT.

	performed at present outside Berth No. 12. The revenue and expenses are not booked in Berth No. 12. After development of infrastructure facility on 63,000 sq. mtrs of plot, the activities which are partly performed outside Berth No. 12 at present, will be performed at Berth No. 12 which will lead to increase in the cost at the Berth No. 12. The overheads may be allowed as projected.		
IX.	**(a). <u>Return on Equity for the year 2002-03</u>** For the periods upto 2004-05, return on equity has been allowed bifurcating the capital employed on notional basis. (50% of the capital employed as equity and balance 50% as debt). Interest on notional debt portion has been allowed at different rates in different years. For the year 2002-03 Return On Equity (ROE) at 20% has been allowed considering notionally 50% as equity. Interest has been allowed at 3.64% (Rs. 17 lakhs) considering a notional debt of Rs. 464 lakhs whereas TMILL did not have any loan during that year. Therefore, ROE at 20% may be allowed on the full capital. Alternatively, if notional adjustment is to be made on debt equity ratio of 1:1, the interest cost should be allowed at least at the prevalent Prime Lending Rate (PLR) of the SBI in that year, which was ranging between 10% and 10.5%. **(b). <u>Return on Equity for the year 2003-04</u>** As clarified by TMILL that the loan of Rs. 6.4 Crores was borrowed at the fag end of the financial year, no interest cost was incurred in 2003-04. Therefore, ROE on full equity should be allowed. Alternatively, if notional adjustment is to be made on debit equity ratio of 1:1, the interest cost should be allowed at the prevalent PLR of SBI in that year which was ranging between 10% and 10.5%. **(c). <u>Return on Equity for the year 2004-05</u>** The actual debt equity ratio for the year was 0.23: 0.77 which has been notionally adjusted in the ratio of 1:1 resulting in the debt portion	Kolkata Port Trust has no comments.	TMILL has requested to give due consideration.

	increasing to Rs.15.13 Crores from actual of Rs.6.9 Crores correspondingly reducing the equity portion for the computation of ROE and interest on debt. Therefore, ROE may be allowed on the actual equity amount. Alternatively, the interest cost should be allowed at the prevalent PLR of the SBI in that year which was ranging between10% and 10.5% if the notional adjustment is to be made on debt equity ratio of 1:1.		
X.	**<u>Capacity Utilisation</u>** (i). The assessed capacity of 10.7 lakh tonnes per annum is based on the condition that the various cargo handling equipments including mobile harbour crane are deployed. As per Licence Agreement the deployment of various equipments and development of infrastructure at Berth No. 12 was phased for the first three years which was ultimately completed during March 2005. Hence, the assessed capacity of 10.70 lakh tonnes is applicable from 2005-06 onwards only. The Authority has adopted this approach while deciding the capacity in the case of PSA SICAL (Order No. TAMP/52/2005-PSA SICAL, dated 23 August 2006). (ii). During the equipping phase of first three years TMILL has been able to handle much more than minimum guaranteed throughput as per the Licence Agreement. Hence, at least 100% capacity utilization should be considered in the first three years and there should not be any deduction in allowable return on equity for underutilization of capacity.	(i). The KOPT has stated that capacity of all the berths of HDC including Berth No. 12 of TMILL is estimated as per the guidelines issued by the Department of Shipping vide their letter No. DW/DTO-4/2001, dated 13 February 2001. (ii). The KOPT has no comments on the contention of the TMILL that the assessed capacity of 10.7 lakh tonnes is applicable from the year 2005-06. (iii). The Licence Agreement required TMILL to commence cargo handling operations at Berth No. 12 within 3 months from the date of award of Licence (29 January 2002). However, the Minimum Guaranteed Throughput (MGT) was to commence from the 4th year of the Licence Agreement. Therefore, the contention of TMILL that it handled cargo more than MGT does not have any relevance, according to KOPT.	TMILL has argued that though the capacity of berth no.12 has been calculated as per Government guidelines, at 0.50, 0.76, 0.76 and 0.77 million tonnes for the years 2002-03 to 2005-06 respectively, full capacity of any berth can not be achieved without proper equipping and adequate storage areas.
XI.	**<u>Working Capital</u>**		
	(a). <u>Security Deposit</u> Clause 2.9.4 of the revised tariff guidelines defines working capital as current assets (excluding cash / deposit balance of funds) less current liabilities. In general definition of current assets security deposit is considered as an item of current assets. Clause 2.9.9. states that TAMP will examine the	KOPT has reported that TMILL has paid Rs.1.05 Crores as security deposit in respect of allotment of 63,000 sq. mtrs of land to the operator which is refundable to TMILL after expiry of the Licence period subject to recovery of dues	The TMILL has requested to give due consideration.

	reasonableness of the various items of working capital like inventory, sundry debtors, cash balances etc., to ensure that it is not unjustifiably expanded. This establishes that the working capital includes but is not limited to only three items namely inventory, sundry debtors and cash balances for which limits have been set. Exclusion of security deposit as an item of working capital has lead to an erroneous conclusion. **(b). <u>Sundry Debtors</u>** As per Clause 2.9.9. of the revised tariff guidelines sundry debtors are limited to two months estate income and railway terminal charges. Estate income includes short term / long term leases. The amount considered in the proposal on account of sundry debtors was two months of projected income from plots given on short term lease, which can be verified from the workings. Sundry debtors may be allowed as part of working capital as proposed. **(c). <u>Inventory</u>** TMILL has requested to make correction in inventory value in the event of any revision in repairs and maintenance cost.	and damages.	
XII.	**<u>Interest cost for financial year 2005-06</u>** In the cost statement submitted no interest cost has been considered for previous years. This can be verified from the expense working sheets submitted giving details of actual expenditure of previous years submitted along with the proposal. Any addition on this account will lead to erroneous results.	KOPT has no comments.	TMILL has requested to give due consideration
XIII.	**<u>Special Rate</u>** TMILL has stated that KOPT has demanded the special rate collected by TMILL This recovery has been taken into account while computing the surplus for the previous period which has been fully set off while deciding the tariff. This gives an impression that TAMP is not in favour of this	KOPT has demanded remittance of special rate realized by TMILL at Berth No. 12, on the ground that the 10% special rate actually collected by BOT operator was included in the tariff calculation of KOPT and the said amount was included in the total revenue	TMILL has stated that it shall abide by the ruling of Authority.

	amount being remitted to KOPT. TMILL has sought the advice of the Authority to respond to KOPT.	collections by KOPT. The port has further stated that taking the figure of revenue so computed, the Authority worked out the amount of excess collection by KOPT and adjusted the said amount by way of reduction of KOPT's tariff. KOPT has contended that if the remittance of the demanded amount on account of special rate is not allowed by Authority, KOPT would suffer by way of double deduction / adjustment. Therefore, the port has requested to issue suitable instruction to TMILL to remit the special rate realized by it at Berth No. 12 to KOPT.	

6.1. Additional information / clarifications were required from the TMILL and KOPT on certain issues arising out of the review application filed by TMILL. Accordingly, TMILL and KOPT were requested to furnish the requisite details vide our letters dated 28 November 2007 and 3 December 2007. The TMILL and KOPT have responded vide their letters dated 7 December 2007.

6.2. Since TMILL and KOPT have raised certain important points, TMILL letter to KOPT and KOPT letter to TMILL were sent to them vide our letters dated 14 December 2007 for their respective comments. The TMILL has responded vide its letter dated 20 December 2007. The additional information / clarifications furnished by KOPT and the response of TMILL are tabulated below:

Sl. No.	Additional information / Clarifications furnished by KOPT	Comments of TMILL on the additional information / clarification of KOPT
1.	(i). TMILL submitted a Detailed Project Report (DPR) prepared by M/s. Stup Consultants Pvt. Ltd., at the time of allotment of additional land wherein projected utilization of 63,000 sq. mtrs of land was reported as follows: Storage and handling area — 51000 sq. mtrs Railway Siding, internal road, circulation, drains, office and utility services etc, — 12000 sq. mtrs Based on the above information, KOPT has opined that the plan of development of 19,000 sq. mtrs area for development of railway siding as submitted to the Authority by TMILL is contrary to what has been mentioned by them in its above said DPR. (ii). The KOPT has also made the following submissions: (a). TMILL was initially allotted 14,000 sq. mtrs of back-up area behind Berth No. 12 of HDC and it has constructed a shed covering 3000 sq. mtrs on this land. Apart from this, about 7000-8000 sq. mtrs of	TMILL has not furnished any comments except stating that it has submitted a detailed plan to KOPT showing areas to be utilised for storage, utility, railway siding, etc.

<table>
<tr><td></td><td>open hardstand area is utilised by TMILL for open storage of cargo, the remaining open area being utilised for the purpose of utility services. Thus, taking together the covered space and the open hard stand area, the total storage space available with TMILL out of the initial allotment of 14,000 sq. mtrs is about 10,000-11,000 sq. mtrs. Therefore, the actual area available for storage of cargo behind Berth No. 12 reported to be not more than 10,000 sq. mtrs. to the Authority is not correct.

(b). Taking into consideration that TMILL is already having storage area of about 10,000-11,000 sq. mtrs from the initial allotted land of 14,000 sq. mtrs and it is also having another 51,000 sq. mtrs of land for development of storage and handling area, its submission to the Authority showing an area of 32,100 sq. mtrs, 44,100 sq. mtrs and 44,100 sq. mtrs of land including covered space proposed to be allotted to the users during the three years period from 2007-08 to 2009-10 respectively, seems to be substantially understated.</td><td></td></tr>
<tr><td>2.</td><td>The annual cargo handling capacity of 10.70 lakh tonnes in respect of Berth No. 12 was computed for the year 2006-07 taking the highest average ship-day output achieved at the said Berth in the previous financial year (4303 tonnes) multiplied with the assumption of the Berth occupancy of 248 days as per the Government guidelines. Similarly, for the period prior to 2006-07, the assessed capacity for Berth No. 12, based on the abovesaid guidelines, for the different years is furnished below:

<table>
<tr><th>Year</th><th>Highest average ship-day output achieved at Berth No. 12 in a year during the previous year (in tonnes per day)</th><th>Assumed occupancy (in days)</th><th>Assessed capacity (in million tonnes)</th></tr>
<tr><td>2002-03 *</td><td>-</td><td>-</td><td>0.50</td></tr>
<tr><td>2003-04</td><td>3083</td><td>248</td><td>0.76</td></tr>
<tr><td>2004-05</td><td>3083</td><td>248</td><td>0.76</td></tr>
<tr><td>2005-06</td><td>3110</td><td>248</td><td>0.77</td></tr>
</table>
* (Initial capacity of Berth No. 12 was assessed as 0.50 million tonnes at the time of the bidding process. The Agreement between TMILL was signed on 29.01.2002)</td><td>TMILL has argued that though the capacity of berth no.12 has been calculated as per Government guidelines, at 0.50, 0.76, 0.76 and 0.77 million tonnes for the years 2002-03 to 2005-06 respectively, full capacity of any berth can not be achieved without proper equipping and adequate storage areas.</td></tr>
</table>

6.3. The KOPT while furnishing its comments on the additional information/ clarifications of TMILL has reiterated its earlier demand for remittance of special rate realized by TMILL. The additional information / clarifications furnished by TMILL and the comments of KOPT thereon are tabulated below:

Sr. No.	Additional information furnished by TMILL	Comments of KOPT on the additional information / clarification of TMILL
	Shore Handling of fertilizers	
(i).	Out of the total additional income of Rs.7.28 Crores considered by the Authority on account of shore handling of fertilizer and containers and despatch related services for the years 2007-08 to 2009-10, the income with reference to shore handling of fertilizer amounts to Rs.6.86 Crores.	(i). With regard to the certification by TMILL, it is stated that as per Article 3.9(a)(i)(k) of the Licence Agreement, TMILL is obliged to perform, undertake or provide in connection with the project, all services which the Licensor is authorized to perform, undertake or provide services under Section 42 of Major Port Trusts Act, 1962.

(ii).	Loading, unloading and transportation of fertilizer is not done by TMILL. It has maintained that no cost of bulk handing equipments and transportation on account of fertilizer was taken in the cost statement. No income was considered on this account.	In view of this, TMILL is required to provide shore handling services to fertilizer imports in case the importers require the same. TMILL should take steps to set up infrastructure including development of the 63,000 sq. mtrs of back-up area for the convenience of port users.
(iii).	TMILL has certified that it will not undertake any activity on account of fertilizer imports at berth no.12 except activity relating to discharge of cargo from the vessel.	
	Container handling income	
(i).	Though it has been mentioned in the Order that an amount of Rs.1.25 lakhs per annum has been added on account of on-board supervision of containers, the actual addition of Rs.1.55 lakhs (for the first half of 2007-08), Rs.1.55 lakhs (for second half of 2007-08), Rs.3.03 lakhs each for the years 2008-09 and 2009-10 has been made.	(i). TMILL Has not been authorized to handle containers at Berth No. 12. Hence, the container income and related expenditure should not be considered in the cost statement of TMILL. (ii). TAMP is requested to not prescribe tariff for container handling at Berth No. 12
(ii).	TMILL has not handled containers at Berth No. 12 till date. Hence, there is no work order in this regard. Therefore, it has requested to consider 80% of the revenue as cost since TMILL has considered a maximum margin of 20% of the rates chargeable. 16% return on capital employed and 20% return on cost / revenue are totally different and are not comparable.	
(iii).	No contract has been entered into with any vendor for this activity. However, whenever TMILL will handle containers at Berth No. 12 and if it is required to provide on-board supervision service, this activity will be entirely outsourced.	
	Equipment running cost	
(i).	The running cost of equipment for handling bulk raw material is more than that of equipments operated for handling of break-bulk.	
(ii).	On an average, the equipment can lift 15 MT of break bulk cargo per move. But, in case of bulk handling, the equipment, with average bucket size of 4 CBM, can lift only 5 MT per move. Hence, number of moves required is thrice in case of bulk handling as compared to break-bulk handling.	TAMP may take a view in the matter.
(iii).	Fork lifts are primarily used for handling of break-bulk cargo and front end loaders are used for handling of bulk cargo. The average diesel consumption for fork lifts is 5 litres per hour whereas front end loaders consume 17 litres per hour.	The Consumption of diesel by an equipment depends on its type, specification, year of manufacture, extent of utilization, maintenance etc., TAMP may take a view by consulting technical experts in this regard.

<table>
<tr><td>(iv).</td><td>The running of fork lifts used for handling break-bulk cargo is low compared to front end loaders used for bulk handling due to point to point operations. In other words, the element of lifting and carrying break-bulk cargo is less as compared to equipments of bulk handling.</td><td></td></tr>
<tr><td>(v).</td><td>The maintenance cost of fork-lifts is much less than front end loaders. During the financial year 2006-07 an amount of Rs.73 lakhs was incurred on spares for maintenance of four loaders installed at Berth No. 12 as against Rs.14.50 lakhs incurred for 11 fork lifts of various capacities. This is due to the fact that the wear and tear of loaders is higher compared to fork-lifts due to nature of cargo handling operations.</td><td>TAMP may take a view in the matter.</td></tr>
<tr><td></td><td><u>Plot rent</u></td><td></td></tr>
<tr><td>(i)</td><td>A total area of 63,000 sq. mtrs of bare land has been taken on lease from KOPT in two phases of 54,000 sq. mtr and 9,000 sq. mtr which is under development. The determination of effective storage area for cargo is as follows:
(in sq. mtrs.)
<table>
<tr><td>Total area allotted</td><td>63000</td></tr>
<tr><td>Less:</td><td></td></tr>
<tr><td>Area for rail track (A)23.00 X 76.00 mtrs</td><td>1748</td></tr>
<tr><td>Area for engine escape & buffer (B) 10.95 X 87 Mtrs</td><td>953 *</td></tr>
<tr><td>Area for drain & retaining wall (C&D) 2 X 670 mtrs</td><td>1340</td></tr>
<tr><td>Area covered by rail track (E) 13.45 X 670 mtrs</td><td>9012 *</td></tr>
<tr><td>Siding on either side of rail track (F) 2X8X670 mtrs
(This area is for handling and not for storage)</td><td>10720</td></tr>
<tr><td>Peripheral drain & retaining wall (G,H,I & J) (2X1X29)+(2X1X35)</td><td>128</td></tr>
<tr><td>Approach to two warehouses (K) 8 X 35 mtrs</td><td>280</td></tr>
<tr><td>Offices, Security, tower lights etc.,</td><td>200</td></tr>
<tr><td>Total effective storage area</td><td>38,619</td></tr>
</table>
* Rounded off</td><td>TMILL has furnished a layout plan of utilization in respect of 63,000 sq. mtrs of land, which envisages creation railway siding, drainage, retaining wall, open and covered storage area, office and security tower.

Examination of the layout plans shows that the storage area of 38619 sq. mtrs proposed to be created alongwith other facilities is reasonable.</td></tr>
<tr><td>(ii).</td><td>4500 sq. mtrs (approx) would be kept on common user basis for storage of cargo during free period.</td><td></td></tr>
<tr><td>(iii).</td><td>The back-up area of 14,000 sq. mtr has an effective storage area of 10,000 sq. mtrs after excluding utilities, roads, offices, drains etc.,</td><td></td></tr>
<tr><td>(iv).</td><td>The total storage area on which plot rentals can be earned by TMILL is 44,119 sq. mtrs (38,619-4500+10000).</td><td>KOPT has not furnished comments.</td></tr>
<tr><td>(v).</td><td>The estimated rental income from the 44,119 sq. mtrs has been provided in the proposal</td><td></td></tr>
</table>

	Insurance	
(i).	TMILL has stated that Berth No. 12 and its back-up area of 14,000 sq. mtrs was developed by HDC and handed over to it. TMILL has insurable interest of cost of repairing the damages that may occur to the assets since TMILL is obliged to maintain these assets in good working condition at its own cost and expense and is required to transfer the same to KOPT in good working condition at the time of expiry of the Licence Agreement.	(i). TAMP may take a view by considering the provisions of Article 7.1 (d) of the Licence Agreement, which specified obligation of TMILL towards insurance during the equipping and operation phase. (ii). With regard to Insurance on 63,000 sq. mtrs of land allotted to TMILL, it is stated that the land is yet to be developed with the required infrastructure. TAMP may take a view by considering provision of Article – 7.1(d) of the Licence Agreement. (iii). KOPT confirms the receipt of Rs.30.06 lakhs towards NRNA premium and Rs.15.03 lakhs towards Security deposit against the allotment of 9000 sq. mtrs of land.
(ii).	The insurable interest for 63,000 sq. mtrs of plot will be the cost of replacement / repair that may occur to the said land / assets developed. HDC has allotted bare land which unless developed, cannot be used for handling and storage. TMILL has considered the total investments to be made on this land including NRNA deposit as the insurable interest.	
	Capacity utilization	
(i).	The capacity of a terminal is dependent on the following three factors: (a). Stackyard Capacity. (b). Berth Capacity (c). Cargo handling equipments	The annual cargo handling capacity of berth No. 12 is estimated by KOPT as per the guidelines prescribed by the Government. With development of 63,000 sq. mtrs of land, TMILL will be in a position to have more storage area as well as facilities for aggregation / evacuation of cargo.
(ii).	At Berth No.12, 10,000 sq. mtrs is available for storage of cargo. The maximum bearing capacity of the plot is 3 metric tonne per sq. mtr. Considering 75% of 10,000 sq. mtrs of storage area has optimum utilization, average quantity of 2.7 metric tonne per sq. mtr for storage and annual turnover ratio of 12, the capacity of the stackyard works out to 2.43 lakh metric tonnes per annum for the years 2002-03 to 2004-05.	
(iii).	While the berth can handle higher cargo volumes, the cargo handling is fully dependent upon the availability of storage facilities and necessary equipments. During the years 2002-03 to 2004-05 TMILL was in the process of installing various cargo handling equipments and developing storage facilities at Berth No. 12, which concluded during the month of March 2005.	

(iv).	Though TMILL handled cargo volumes of 6 to 7 lakh tonnes annually during the said three years, it cannot be construed to be the actual capacity since the higher volumes were handled by stacking in the plots of the customer outside Berth No. 12 and deploying hired equipments. Had the stacking area not been allotted to the customer, TMILL could not have handled the said volumes even with outsourced equipments. Since the cargo handled for the said three years are higher than the calculated capacity of the stackyard, including the factor that TMILL did not have adequate handling equipments and storage facilities, TMILL has requested not to make any adjustment on account of capacity utilization during the years from 2002-03 to 2004-05.	
	Interest cost for financial year 2005-06	
(i).	TMILL had taken a loan for purchase of harbour mobile crane for berth no.12 during the year 2005-06. TMILL had incurred total interest of Rs.0.38 Crores.	———
(ii).	The difference of Rs.20 lakhs is a difference of cost provided in the cost statement and the cost appearing in the segregated accounts. The cost statement does not provide for interest as expense and the same was not included in the cost statement. The difference is bound to occur.	———
(iii).	The total operating cost (excluding depreciation) as depicted in the cost statement for the year 2005-06 is Rs. 1397 lakhs. The same has been computed from the segregated annual accounts.	———

7. A joint hearing in this case in reference was held on 1 March 2008 at the KOPT premises. The TMILL and KOPT made the following submissions:

TM International Logistics Limited (TMILL)

(i). Some income has been added for activities which we don't perform. Therefore, the notional income should be deleted.

(ii). We pay royalty to KOPT since 2002-03. This payment should be allowed as cost till 2004-05.

(iii). Additional land of 9000 sq. mt. is taken on lease from HDC in October 2007. Please take into account the outflow on account of lease rentals. Further, Security Deposit made to the KOPT on this account should form part of Sundry Debtor.

(iv). The notional consideration of debt : equity position for regulating return to be allowed till the year 2005 needs to be reviewed.

(v). The capacity of the terminal reached the optimum level only after it was fully equipped. TAMP should not consider maximum capacity to regulate return from the first year of operation.

(vi). Moderation of running cost of equipment effected by TAMP needs to be reviewed in the light of change in equipment profile required to handle bulk cargo.

(vii). The past period surplus should be adjusted over the entire project period. This will arrest wide fluctuations in tariff.

(viii). The past period surplus may arise from excess charges paid by past users. There may not be any justification in allowing the benefit of tariff reduction, due to accounting of such past surplus, to the immediate future users. We agree to refund the past surplus to the concerned users.

(ix). Even if the notional debt component in the capital structure is to be allowed lesser return, then it should not be given at the actual cost of debt. TAMP should allow return on such element at the then prevailing PLR which was around 10.5% p.a.

Kolkata Port Trust (KOPT)

(i). 10% surcharge collected by TMILL as per KOPT scale of rates should be refunded by them to KOPT.

(ii). We have given detailed comments. Please consider.

(iii). We may not insist on TMILL refunding the 10% surcharge to KOPT. The levy, like other charges, may be unauthorisedly levied under mistaken identity. But, KOPT has recognised the inflow on this account for the relevant period. Therefore, the loss arising to KOPT due to TMILL not refunding this amount should be kept in mind while fixing / revising tariff for KOPT.

(iv). Generally, a terminal is expected to provide a standard package of services. If TMILL claims that it does not carry out some operations in respect of certain cargoes, then they should substantiate their claim with documentary evidence.

(v). With reference to designed capacity of the terminal, TMILL should substantiate its argument about the gradual increase of capacity by showing that the investment made by them in creating the capacity is also in a phased manner.

(vi). Ideally, the past period surplus should be refunded to the concerned parties. This may be fraught with practical accounting and billing problems. If TMILL's argument about adjusting the past surplus over the entire project period in instalments, then they must agree to pay interest on the unamortised amount. We feel, even the past surplus itself should be assessed with the interest accrued. Excess collection made by an operator cannot be an interest free source of funding his future activities.

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

(i). Clause 3.3.1. of the revised tariff guidelines issued by the Government in March 2005 enables this Authority to entertain application for review of any tariff order to the limited extent of errors apparent on the face of records considered in the relevant proceedings, provided such an application is filed within 30 days of the notification in the official gazette. The application in the instant case is filed within 30 days of the notification of the Order dated 12 October 2007 in the Gazette of India. Further, this Authority is bound by the directions of the Hon'ble High Court of Calcutta passed in Writ Petition No.24493(W) of 2007 directing this Authority to dispose of the review application dated 5 November 2007 filed by TMILL.

(ii). Various points on which the TMILL has sought review of the earlier Order are analysed below, duly considering the additional information/clarifications furnished by TMILL and KOPT:

I. Shore handling of fertilizers

Tariff Order of October 2007 [Paragraph 13 (xxii)(a)]

(i). TMILL has not estimated income on account of loading / unloading / restacking operation in respect of fertilizer, though it has prescribed a specific tariff item in its proposed Scale of Rates. This income at Rs.40 per MT reportedly levied by TMILL at present has been estimated and included in the income estimation.

(ii). Likewise, income on account of transportation of fertilizer for which a specific rate has been proposed is also included in the income estimation.

Points made by TMILL in its review application

An amount of Rs.6.86 crores for the years 2007-08, 2008-09 and 2009-10 has been added on account of loading, transportation and on-board supervision of fertilizers. TMILL does not undertake the above said activities for fertilizers as the customer takes delivery from the hook point. Hence, addition to income on this account appears to be erroneous.

Analysis

The TMILL had estimated traffic of fertilisers at 2.50 lakh tonnes, each for the years 2007-08 to 2009-10 respectively. It had also proposed rates for loading / transportation and on-board charges of fertilisers. The stand of TMILL that it will not undertake these activities were not brought out during the earlier relevant proceedings. This Authority, was, therefore, led to believe that TMILL would render the said services at Berth no.12. Accordingly, the income on account of rendering the said services was estimated at Rs.187.50 lakhs, Rs.187.50 lakhs and Rs.197.37 lakhs for the years 2007-08 to 2009-10 respectively and considered in fixation of tariff. The amount of Rs.6.86 crores claimed by TMILL cannot be excluded as Rs.5.72 crores only relate to the additional income from fertiliser handling included in the income estimates. The balance of Rs.1.14 crores was added to the income due to correction of errors in the estimates of TMILL relating to income from steel & iron ore handling.

Now, TMILL has certified that it will not undertake any activity except discharge of cargo from the vessel. The document of the TATA Chemicals Limited (TCL) produced by the TMILL also certifies that the TCL takes direct delivery of its bulk cargo discharged by the vessel's gears and that the TMILL does not provide services for on-board supervision and any sort of shore handling. In view of the position clarified by TMILL, inclusion of the estimated income of Rs.5.72 crores earlier on account of loading and transportation of fertilisers is an error which should be rectified by excluding the amount from the total income estimation. Consequently, the rates for the corresponding services prescribed in the Scale of Rates are deleted as it would serve no purpose to retain tariff for a service which is not envisaged to be rendered in near future.

II. Container handling income

Tariff Order of October 2007 [Paragraph 13 (xxii)(a)]

Income from on-board supervision for handling containers has not been estimated by TMILL though TMILL has adopted the existing rate of Rs.250 per TEU in the proposed Scale of Rates. Income of Rs.1.25 lakhs each for the year 2007-08 to 2009-10 on account of on-board supervision charges has been estimated and included on account of on-board supervision charges.

Points made by TMILL in its review application

Income projections from container handling has been enhanced for the years 2007-08 to 2009-10 amounting to about Rs.3 lakhs per annum on account of on-board supervision charges. Corresponding expenses should also be considered. 80% of the income amount should be considered as expense on this account.

Analysis

The TMILL had estimated container traffic at 500 TEUs each for the year 2007-08 to 2009-10. It had also proposed a rate of Rs.250 per TEU for on-board supervision of container. Accordingly, the income at Rs.1.25 lakh per annum was estimated.

The additional income of Rs.3 lakhs each for the years 2007-08 to 2009-10 mentioned by TMILL in its review application is actually the difference between the container handling income as estimated by TMILL and that considered by this Authority in its earlier Order. In the revised estimated income, the increase of Rs.1.25 lakhs per annum is an account of on-board supervision charges and the balance was on account of errors in the estimates furnished by TMILL which was found to be not in conformity with the (then) prevailing Scale of Rates of KOPT.

While income from on-board supervision for handling container has been recognised in the estimate of income in the Order dated 12 October 2007, the corresponding expenses, as correctly pointed out by TMILL, were not considered which is required to be rectified.

The actual cost data pertaining to providing on-board supervision service are not furnished by TMILL since it has not handled containers so far. This Authority, therefore, is inclined to consider on adhoc basis the amount of Rs.200 per TEU proposed by the TMILL for estimating the corresponding expenses. This will be, however, subject to verification with per TEU actual cost relating to on-board supervision service during the next review of the tariff of TMILL. If any variation in the actual expenditure is found, the advantage accrued to TMILL due to accepting its estimates now will be fully set off in the next review of tariff.

This Authority has disposed of the objection raised by KOPT to the handling of containers by TMILL vide paragraph No.13 (xxi) (c) of Order dated 12 October 2007. It is reiterated that prescription of tariff for handling containers by TMILL should not be construed as an endorsement by this Authority of the claim of the operator about his right to handle containers. It is for the Licensor and Licensee to sort out this issue between themselves.

III. Royalty / Revenue share

Tariff Order of October 2007 [Paragraph 13(x)(a)]

In those BOT cases where the bidding process was finalized before 23 July 2003, the tariff computation will take into account royalty / revenue share as cost for tariff fixation in such a manner as to avoid likely loss to the operator on account of royalty / revenue share not being taken into account, subject to minimum of the amount quoted by the next highest bidder, as stipulated in Clause 2.8.1 of the revised tariff guidelines. Admissibility of royalty as cost in case of TMILL is governed by this guideline from the year 2005-06 onwards as the revised tariff guidelines came into effect from 31 March 2005; and, royalty / revenue share will not be considered as pass through for the years prior to 2005-06 as per the policy prevalent prior to the implementation of revised tariff guidelines. The revenue share payment for the years 2002-03 to 2004-05 are, therefore, not considered as cost.

Points made by TMILL in its review application

Since the license agreement was signed much before July 2003, royalty / revenue share needs to be considered as an item of admissible expenditure for the years 2002-03 to 2004-05 also. In the case of Chennai Container Terminal Limited (CCTL) [No.TAMP/73/2003-CHPT dated 27.11.2003] and in the case of Nhava Sheva International Container Terminal Limited (NSICT) [No.TAMP/15/2005-NSICT dated 7.3.2006] 100% royalty payments have been allowed as admissible expenses.

The surpluses for the years 2002-03 to 2006-07 and for the half year April-September 2007 have been adjusted while deciding the tariff. In view of this, TMILL is left with only an amount equal to the return on equity / capital employed for these years, which is much less than the royalty / revenue share paid for those years. Since royalty / revenue share is actually payable and paid, the operations of Berth No. 12 for those years would result in actual loss. Therefore, the royalty / revenue share may be considered as admissible item of cost for the years 2002-03 to 2004-05 also.

Analysis

(i). The exercise of review of tariff of NSICT undertaken by this Authority in 2005 was *suo motu* review. Therefore, the approach adopted in 2000 Order of allowing entire royalty as expense was followed for the years 2000-01 to 2004-05.

(ii). At the time of initial fixation of tariff at the CCTL, this Authority had not admitted the royalty / revenue share payable by the CCTL to the Chennai Port Trust (CHPT) as a cost item for determination of tariff. This stand was reiterated by this Authority while disposing of subsequent review application filed by the CCTL against the initial Order. However, part of the revenue share was eventually allowed as cost in compliance with a policy direction issued by the Government of India dated 7 November 2003 under Section 111 of the Major Port Trusts Act, 1963 which applies only in the case of CCTL.

The position of CCTL and NSICT with reference to the royalty / revenue share stands on a different fact.

In case of other private terminals, royalty / revenue share was not allowed as pass through for the years prior to 2005-06 as per the then prevailing policy. Since no error is established, there is no case to review the Order dated 12 October 2007 in this regard.

IV. Equipment running cost

Tariff Order of October 2007 [Paragraph No. 13(xxiii)(d)]

(i). TMILL has estimated oil and lubricant cost at Rs.140.94 lakhs for the year 2007-08 which is projected for subsequent two years by applying an escalation of 4.5% per annum over the respective previous years. The estimated amount of Rs.140.94 lakhs for 2007-08 when compared with the actual expenditure of Rs.55.44 lakhs during 2006-07, as subsequently conveyed by TMILL in June 2007, there is a steep increase of around 154% in 2007-08.

No change in the total number of equipments during the years 2006-07 and 2007-08 is reported by TMILL. While detailed calculation has been furnished for the estimate for the year 2007-08, no such calculation is furnished for the year 2006-07, despite a request made in this regard. In the absence of calculation for the year 2006-07, the reasons for steep increase in the estimate for the year 2007-08 as compared to the actual for 2006-07 could not be ascertained. Therefore, the average cost of diesel and lubricant for handling per tonne of cargo is calculated based on the actual cost of oil and lubricants for the year 2006-07. The average works out to Rs.6.15 per metric tonne. This rate is escalated by applying an escalation factor of 5.4% per annum for the years 2007-08 to 2009-10 over the

respective previous years to arrive at the estimates of oil and lubricant cost for the years 2007-08 to 2009-10.

(ii). The operator has estimated an amount of Rs.96.50 lakhs, Rs.130.84 lakhs and Rs.110.38 lakhs for the years 2007-08 to 2009-10, respectively towards repairs and maintenance cost of equipments against the actual expense of Rs.27.55 lakhs for 2006-07 reported by the operator subsequently in June 2007. The steep hike in the estimate for 2007-08 is attributed to the expiry of equipment warranty of various machines and expensive spares for the machines. This general statement is not supported by any documentary evidence or cost details. The estimates are, therefore, moderated applying the escalation factor of 5.4% per annum over the respective previous year's estimate taking the actual expenditure of Rs.27.55 lakhs for the year 2006-07 as base.

(iii). In respect of port permit and road tax, an amount of Rs.8.87 lakhs each is estimated for the years 2007-08 to 2009-10 as against the actual expenses of Rs.4.56 lakhs in 2006-07 communicated by operator subsequently in June 2007. The estimates for 2007-08 to 2009-10 are moderated by applying the escalation factor of 5.4% per annum over the respective previous years, taking the actual expenditure of the year 2006-07 as base.

Points made by TMILL in its review application

For the years 2007-08 onwards, the projected cost of oil and lubricants have been moderated based on the average per tonne cost for the year 2006-07. During 2006-07, TMILL had not handled any limestone or iron ore at Berth No. 12. As per the company's policy and as accepted by the Auditors, the cost of equipments relating to loaders (bulk handling equipments) were not considered at all in Berth No. 12.

TMILL has projected bulk cargo (limestone and iron ore) from 2007-08 onwards at Berth No. 12 and it is planned to handle these cargo with own equipments. Hence, the cost of oil and lubricants, repair and maintenance and equipment registration cost with respect to loaders will be incurred for Berth No. 12 operations from 2007-08 onwards. Hence, there will be substantial increase in the overall equipment cost in addition to reasons on account of expiry of warranties of newly purchased equipments.

Therefore, moderating the expenses on the basis of actual cost for the year 2006-07 for Berth No. 12 with only normal increase on account of inflation has given erroneous results. It has requested to accept the estimated cost on the basis of detailed calculation submitted with the proposal.

Analysis

(i). The contention of TMILL that the estimates of oil and lubricant cost have been moderated to only normal increase on account of inflation is not correct. The estimates of oil and lubricant cost has been arrived for the future years based on the actual unit cost per tonne for the year 2006-07 derived from the estimates furnished by TMILL. The estimated traffic for the years 2007-08 to 2009-10 furnished by TMILL which included the traffic of limestone and iron ore. The total estimated oil & lubricant cost for the said three years was arrived at by applying the unit cost subject to annual escalation over the entire traffic projected by TMILL.

(ii). TMILL has estimated Rs.140.94 lakhs, Rs.147.29 lakhs and Rs.153.91 lakhs for the years 2007-08 to 2009-10 respectively towards oil and lubricant cost, as compared to the actual of Rs.55.44 lakhs for the year 2006-07. If the steep hike in the estimated cost as compared to the actual cost is attributable to the increase in the usage of loaders to handle bulk cargo, then, it should be quantified with reference to the bulk cargo estimated to be handled during the said three years and necessary adjustment in the cost of handing due to the different set of

equipment envisaged to be deployed. No such working has been made available to us. The KOPT has also pointed out in its comments about the need to justify the projected cost by furnishing a detailed analysis. The general statement of TMILL that there is difference in the running cost of fork lifts and loaders does not help to validate the estimates of oil and lubricant cost furnished by TMILL.

(iii). TMILL has mentioned about the workings furnished by it for estimation of oil and lubricant cost for the year 2007-08 to 2009-10. These estimates are based on the parameters like hourly consumption of fuel, number of hours of operation and fuel cost. The equipment wise actual oil and lubricant cost for the year 2006-07 furnished by TMILL vide its letter dated 15 June 2007 did not reveal the associated parameters considered despite a query being raised by this Authority in this regard during the earlier proceedings before this Authority. Even now such details for the year 2006-07 are not made available to us to validate the workings for the years 2007-08 to 2009-10. That being so, there is no case for any review of the estimates of oil and lubricant cost since TMILL has not established any error on this account.

(iv). The actual oil and lubricant unit cost of Rs.6.15 per tonne for the year 2006-07 was arrived at based on the total actual oil and lubricant cost of Rs.55.44 lakhs and the actual traffic of 9,00,459 tonnes. The total actual traffic of 9,00,459 tonnes for the year 2006-07 included actual fertiliser traffic of 2,70,000 tonnes. The TMILL has confirmed that it does not undertake the activities of loading, transportation and on-board supervision of fertiliser cargo and the concerned user takes direct delivery of this cargo. That being so, the fertiliser cargo may not attract the expenditure towards oil and lubricant. In that case, the per unit actual oil and lubricant cost for the year 2006-07 needs to be reworked. The reworked figure considering the total oil and lubricant cost at Rs.55.44 lakhs and the actual total traffic of 6,30,459 tonnes (excluding fertiliser traffic) works out to Rs.8.79 per MT. This unit rate of Rs.8.79 per tonne is considered as base rate to estimate the oil and lubricant cost for the years 2007-08 to 2009-10, with annual escalation factor of 5.40%. Thus, the modified estimate of oil and lubricant cost for the years 2007-08 to 2009-10 works out to Rs.60.19 lakhs, Rs.68.32 lakhs and Rs.75.82 lakhs respectively, as per the table shown below:

Particulars	**Actuals**	**Estimates**		
	2006-07	**2007-08**	**2008-09**	**2009-10**
Total traffic in tonnes	900459	900000	950000	1000000
Less: fertiliser traffic in tonnes	270000	250000	250000	263158
Balance	**630459**	**650000**	**700000**	**736842**
Rate per tonne (in Rs.)	8.79	9.26	9.76	10.29
Amount in Lakh Rupees (rounded off)	**55.44**	**60.19**	**68.32**	**75.82**

V. Plot rent

Tariff Order of October 2007 [Paragraph No. 13(xxiii)(f) and (xiii)(a)]

(i). TMILL has been allotted 14,000 sq. mtrs. of backup area including covered space behind berth no.12. The actual area available for storing of cargo is not more than 10,000 sq. mtrs. TMILL has been allotted an additional 54,000 sq. mtrs of land on lease expiring in January 2032. TMILL has reported that an additional 9000 sq. mtrs. of bare land is being allotted for which it has made an application in January 2007. However, it is not indicated whether and when the additional 9000 sq. mtrs. will be allotted to the TMILL. Effectively, a total area of 64,000 sq. mtrs. is available with TMILL.

TMILL has clarified that it has planned to develop 19,000 sq. mtrs. area to provide railway siding and covered warehousing facility for storage of cargo. Therefore, 45,000 sq. mtrs. of area is effectively available for storage of cargo. The income estimation arising out of allotment of plot for storage of cargo shows that an area

of 32,100, 44,100 and 44,100 sq. mtrs of land including covered space are proposed to be allotted to the users during the three year period from 2007-08 to 2009-10. The license agreement provides for an initial allotment of land to the extent of 14,000 sq. mtrs. with a general provision about allotment of additional lands / utilities, etc. The estimated plot rental income for the years 2007-08 to 2009-10 is accepted as furnished. At the time of next review, if it is found that actual income varies widely from the estimates considered now, the additional accrual will be fully set off against future tariff.

(ii). The additional 9000 sq. mtrs. of land is yet to be allotted by the KOPT as reported by it in May 2007. TMILL has claimed that it has considered the rental income arising out of 9000 sq. mtrs. of land. The estimated rental income is not seen to be inclusive of this 9000 sq. mtrs. of land. Therefore, the lease rent expenditure estimated on additional land of 9000 sq. mtrs. amounting to around Rs.16 lakhs per annum is not considered.

(iii). The additional investment of Rs.1953 lakhs envisaged during the year 2007-08 is towards land development and other related work and includes Non-Refundable Non-Adjustable (NRNA) deposit of Rs.30.07 lakhs for the proposed allotment of 9000 sq. mtrs. of land. The proposed investment of Rs.30.07 lakhs as NRNA for 9000 sq. mtrs. is not considered since the 9000 sq. mtrs. of land is yet to be allotted.

Points made by TMILL in its review application

While submitting the revised proposal, it has been mentioned at para 6 of letter dated 14 February 2007 that the proposed development of infrastructure facilities at Berth No. 12 included development of railway siding and storage yard on land measuring 63,000 sq. mtrs. Out of this area, 54,000 sq. mtrs had already been taken over. The balance area of 9,000 sq. mtrs was allotted on 19 September 2007 and possession was taken on 12 October 2007 after payment of NRNA premium and security deposit. Hence, disallowance of expenditure on lease rental for 9,000 sq. mtrs has lead to erroneous conclusion. This cost needs to be considered and the capital employed for ROCE should include NRNA payment for this land.

9,000 sq. mtrs of land is a part of the project for developing infrastructure at Haldia Port and should not be considered in isolation. Out of the 63,000 sq. mtrs of plot, which includes 9,000 sq. mtrs area, rental income from 44,000 sq. mtrs was considered in the proposal. Only 44,000 sq. mtrs would be available for actual storage, balance being used for railway siding, roads, drainage, utilities etc.

Analysis

(i). The fact regarding taking over of possession of additional 9,000 sq. mtrs of land by TMILL from KOPT was not brought to the notice of this Authority before finalization of the case in October 2007 which culminated in Order dated 12 October 2007. Incidentally, the additional area of 9,000 sq. mtrs. of land was also taken over by TMILL on 12 October 2007. The issue before this Authority is admissibility of lease rent expenditure estimated on additional land of 9,000 sq. mtrs amounting to around Rs.16 lakhs per annum and the admissibility of investment of Rs.30.07 lakh as Non-Refundable Non-Adjustable (NRNA) amount deposited by TMILL with KOPT for the allotment of 9,000 sq. mtrs of additional land.

(ii). TMILL has been allotted land of 63,000 sq. mtrs in two allotments, namely 54,000 sq. mtrs and 9,000 sq. mtrs. The detailed break-up for utilization of 63,000 sq. mtrs of land furnished by TMILL indicates effective storage area of 38,619 sq. mtrs. The remaining area of 24,381 sq. mtrs is proposed to be utilized for creation of railway siding and other ancillary facilities thereat. It is noteworthy that the KOPT has endorsed the plan of utilization of 63,000 sq. mtrs allotted by it to TMILL.

(iii). Considering the effective storage area of around 10,000 sq. mtrs out of the 14,000 sq mtrs initially allotted to TMILL at the time of signing the Licence Agreement and the effective storage area of 38,619 sq. mtrs mentioned in the previous paragraph, TMILL has a total effective storage area of about 48,600 sq. mtrs. TMILL has estimated plot rental income from 44,100 sq. mtrs leaving out an area of 4,500 sq. mtrs for free storage of cargo. Since the Scale of Rates of TMILL provides for free storage period for certain commodities, storage area for such cargo is definitely required.

(v). (a). TMILL has accounted for the entire 63,000 sq mtrs of additional land as already explained above. The plan of utilization of entire additional land has been endorsed by the licensor. That being so, the Licence fee payable by TMILL for the additional land of 9,000 sq. mtrs requires to be allowed as pass through.

(b). As conveyed by KOPT, the monthly rent for 9000 sq. mtrs. of land is payable by TMILL at Rs.1,25,280 subject to annual escalation. The monthly rent works out to Rs.13.92 per sq. mtr. per month.

Clause 5.3 of the LA stipulates that the Licensee (TMILL) is required to pay license fee for additional land in accordance with the terms and conditions stipulated by the Licensor (KOPT). The terms and conditions contained in the letter dated 19 September 2007 for allotment of additional 9000 sq. mtrs. to TMILL stipulates, inter alia 5% annual escalation.

The land policy guidelines for major ports issued by the Government of India in the (then) Ministry of Shipping (MOS) in February / March 2004 which was made applicable to KOPT in February 2005 vide MOS letter No.PT-17011/32/2000-PT dated 10 February 2005 stipulates that the Scale of Rates shall be escalated by 2% per annum.

The existing conditionalities in the Rent Schedule for allotment of Land and Buildings of KOPT at Haldia and the relevant Scale of Rates for allotment of land at Kolkata stands amended to the extent such conditionalities are inconsistent or at variance with the Land Policy guidelines issued by the Government vide Order dated 23 August 2006 passed by this Authority. This gives rise to certain ambiguity in relation to annual escalation in lease rental. While the issue involved is to be analysed, separately, the annual escalation at 5%, as claimed by TMILL and confirmed by KOPT, is considered for the purpose of estimation of lease rentals.

Applying the rate of Rs.13.92 per sq. mtr. per month and considering annual escalation of 5%, the lease rent payable by TMILL works out to Rs.7.52 lakhs, Rs.15.42 lakhs and Rs.16.20 lakhs for the years 2007-08 (2^{nd} half), 2008-09 and 2009-10, respectively, which is considered in this analysis.

(c) TMILL has paid a sum of Rs.3006720 towards NRNA deposit for the additional allotment of 9,000 sq. mtrs of land in October 2007 to KOPT as acknowledged by the port. This sum is capitalized and proposed to be spread over the remaining license period of 23 ½ years from October 2007. Accordingly, an amount of Rs.0.64 lakhs is considered as write-off for the second half of the year 2007-08 and Rs.1.28 lakhs each is considered for the remaining two years.

The unamortized balance of NRNA deposit is considered for allowing a return at 16% and a return of Rs.4.71 lakhs, Rs.4.5 lakhs and Rs.4.3 lakhs is allowed for the years 2007-08 (2^{nd} half) to 2009-10 respectively.

VI. Insurance

Tariff Order of October 2007 [Paragraph No. 13(xi)(c)(ii)]
With reference to the estimated insurance cost at 1.50% on the proposed capital expenditure of Rs.2237 lakhs in the year 2007-08, it is necessary to know the nature of proposed investment in order to ascertain the incidence of insurance cost on such assets. The addition to the assets considered in the estimated capital employed include plant and machinery estimated at Rs.60 lakhs and covered shed at Rs.224 lakhs which may have to be insured. The balance amount of Rs.1953 lakhs is proposed to be spent towards land development, fencing, non-refundable non-adjustable amount paid / payable to KOPT and Land Survey cost. Looking into the nature of the expenditure, the estimated insurance cost on these items of expenditure does not appear to be justified.

Points made by TMILL in its review application
When Berth No. 12 and its back-up area of 14,000 sq. mtrs had been allotted to TMILL in 2002, insurance for the back-up (storage) area had also been taken. This was done to cover damages to the concrete storage area due to operational and accidental reasons. A similar insurance cover for the new yard of 63,000 sq. mtrs (project cost Rs.1953 lakhs) is proposed to be taken. The proposed insurance cost should not be moderated. (A copy of insurance policy for the period 21/03/2007 to 20/03/2008 produced by TMILL shows that the insurance amount is Rs.14 Crores which consists of Rs.11 Crores for Berth and 2.90 Crores for back-up land and 0.10 Crore for fire fighting system with pipelines.)

Analysis
As per Clause 7.1 (d) (ii) of the license agreement, the TMILL is required to take insurance cover for the infrastructure created at the allotted premises and at the additional land / area allotted by the KOPT. That being so, it appears that there is error in the Order dated 12 October 2007 as far as exclusion of the proposed capital expenditure of Rs.1953 lakhs to create infrastructure facilities at the additional land for the purpose of calculation of insurance cost. Since the additional 9000 sq. mtr. area is now recognised for tariff fixation and the relevant capital expenditure of Rs.1953 lakhs have also been admitted as part of capital expenditure, and recognising the requirement imposed by the Licence Agreement, the insurance cost needs to be admitted as an item of expenditure. Therefore, the estimated amount proposed to be spent towards creation of infrastructure facilities amounting to Rs.1953 lakhs is considered for estimation of insurance cost. Earlier, TMILL estimated insurance cost at 1.50% on the proposed capital expenditure, which was below the actual insurance cost reported by TMILL with documentary evidence for the year 2006-07. Therefore, the insurance cost estimated at 1.50% per annum on the proposed capital expenditure of Rs.1953 lakhs is allowed for the years 2008-09 and 2009-10.

Since the insurance cost is yet to be incurred by the operator on the proposed infrastructure facilities, the estimated insurance cost will be verified with reference to the actual insurance cost based on documentary evidence during the next review of the tariff of TMILL.

VII. Lashing, securing, dunnaging & Unlashing, despatch related services and survey expenses.

Tariff Order of October 2007 [Paragraph No. 13(xxiii)(g)(i), (iii) & (v)]

(i). TMILL has outsourced this activity as seen from the copy of the contract furnished. This activity is seen to have been outsourced for the estimated traffic of steel cargo of TATA steel, at the rate of Rs.80/- PMT finalised by TMILL in the year 2004-05 with a private party. The rate of Rs.84 per MT adopted by TMILL for estimation of this expenditure for the year 2007-08 is not supported by

documentary evidence. Therefore, the estimated expenditure for this activity for the year 2007-08 to 2009-10 is considered uniformly at the rate of Rs.80 per tonne.

(ii). The expenditure towards unlashing service, which has also been outsourced at Rs.8/- per tonne since the year 2004-05. It appears that this activity is being undertaken by the private party @ Rs.8/- per tonne finalised in 2004-05 even upto the years 2007-08. TMILL has not furnished documentary evidence for change in the rate, if any. So, the estimates for unlashing activity calculated applying a rate of Rs.8/- PMT for the year 2007-08 to 2009-10 is considered in this analysis.

(iii). The despatch related services for handling limestone has been outsourced by TMILL for which it has finalised a rate of Rs.4.50 per tonne during 2004-05. TMILL has not produced documentary evidence for change in the rate, if any.

Since the income estimation includes income arising out of despatch related services for the year 2007-08, the expenditure on account of this activity estimated at Rs.4.5/- PMT is reckoned with for the year 2007-08 though TMILL has not estimated this expenditure for the year 2007-08. The estimates for subsequent two years are modified to reflect the rate of Rs.4.50 per tonne.

(iv). The rate of survey expenses considered by TMILL for estimation purpose varies from cargo to cargo. TMILL has furnished documentary evidence for the rate of Rs.14 per MT for TATA Steel cargo finalised in 2005-06. No documentary evidence is furnished to show change, if any, in the rate. Further, no documentary evidence has been furnished for the rates of Rs.3, Rs.2 for other cargo. The rates adopted by TMILL for the estimates of survey expenses for the year 2007-08 is considered for the years 2008-09 and 2009-10 subject to verification of actuals during the next review of tariff of TMILL.

Points made by TMILL in its review application

The estimated cost has been moderated based on the rates prevailing in the year 2006-07 or prior to that. The normal escalation factor of 5.40% per annum has not been applied while projecting the cost.

Analysis

The concerned activities are outsourced by TMILL. In the earlier proceedings, the TMILL furnished documentary evidence pertaining to the year 2004-05 in respect of LSD and despatch related services and a copy of the contract pertaining to the year 2005-06 in respect of survey expenses. It did not report subsequent change in the rates, if any, had taken place. So, normal escalation was not applied while projecting the cost.

However, the cost of rendering services may not remain constant over a period of four to five years. Further, the relevant contracts are for a limited period, as revealed by the documents furnished, but are presumed to continue since no new development is reported in this regard. The possibility of increase in the cost of availing the said services in future cannot be ruled out. Therefore, it is reasonable to allow the permissible escalation of 5.4% in respect of estimation of lashing / securing / dunnaging (LSD) and unlashing, despatch related services and survey expenses. The respective items of estimated expenses are moderated applying the annual escalation factor of 5.4% over the rate of Rs.80 for LSD, Rs.8 for unlashing, Rs.4.50 for despatch related services as base.

The TMILL had adopted Rs.14 per MT for TATA Steel and Rs.2 and Rs.3 for other cargo for estimation of survey expenses for the year 2007-08. The per tonne rates adopted by TMILL for the year 2007-08 are considered as base and escalated by 5.4% per annum for estimating the survey expenditure for the next two years.

The above estimates will be verified with reference to actuals based on the documentary evidence to be produced by the TMILL during the next review of its tariff.

VIII. Overheads

Tariff Order of October 2007 [Paragraph No. 13(xxiii)(i)]

(i). The estimated miscellaneous operational expenses are in the nature of unloading at siding & transportation to plot/hook point strapping, slings and gear cost etc. The operator has reported an actual expenditure of Rs.65 lakhs for 2006-07 escalating this expenditure by around 7.5% for the years 2007-08 to 2009-10. The estimates for the years 2007-08 to 2009-10 are moderated by applying an escalation factor of 5.4% per annum over the respective previous years taking the amount of the year 2006-07 as base.

(ii). In addition, TMILL has estimated an expenditure of around Rs.99 lakhs and Rs.103 lakhs during the years 2008-09 and 2009-10 respectively towards unloading of steel cargo at siding and transportation to plot / hook point. The TMILL has not given any documentary evidence to justify the expenditure despite a query in this regard. The estimated expenditure has been calculated by TMILL at Rs.110/- per tonne of rail bound steel cargo. As the railway siding is expected to be operationalized during the year 2008-09, the estimated expenditure is considered subject to verification with actuals during the next review of its tariff.

(iii). Miscellaneous operational expenses include civil maintenance of plots. TMILL has contemplated to shift the existing covered warehouse in the back-up area behind the Berth No. 12 to the newly allotted plot in the year 2008-09 for the reasons of operational difficulties in the back-up area, at a cost of Rs.75 lakhs. As reported by KOPT, this shed was erected by TMILL in the back up area allotted to it. It is not clear why the operational difficulties projected now by the operator were not foreseen at the planning stage of construction of the shed at the back up area. No cost details to justify the estimate have been furnished inspite of a specific request made by us. In the absence of cost details this Authority is not in a position to consider the estimated expenditure of Rs.75 lakhs in the year 2008-09.

Points made by TMILL in its review application

The proposed infrastructure development at Berth No. 12 of more than Rs.20 Crores should have been taken into consideration while moderating the estimated overhead for the years 2007-08 to 2009-10. Factors like cost of running and maintenance of this infrastructure facility which would necessarily increase the activities at Berth should be taken into account. Reference may be made to the projected revenue compared to actuals of previous years. The activities like shore handling of lime stone and steel export are partly performed at present outside Berth No. 12. The revenue and expenses are not booked in Berth No. 12. After development of infrastructure facility on 63,000 sq. mtrs of plot, the activities which are partly performed outside Berth No. 12 at present, will be performed at Berth No. 12 which will lead to increase in the cost at the Berth No. 12. The overheads may be allowed as projected.

Analysis

The estimates as furnished by TMILL for miscellaneous operational expenses for the year 2007-08 were accepted without any modification by this Authority. The estimates for the next two years 2008-09 and 2009-10 were also accepted by this Authority except exclusion of expenditure relating to cost of shifting of shed for the reasons stated in the Order dated 12 October 2007. The points made by TMILL seeking a review are too general and do not point out any specific error in the earlier Order which may warrant a review of it.

IX. (a). Return on Equity for the year 2002-03

Tariff Order of October 2007 [Paragraph No. 13(xvi)(a)]
In case of private terminal operators the return allowed prior to the year 2005-06 was based on the equity component of capital employed subject to a debt / equity ratio of 1:1. The capital structure of TMILL for berth No. 12 for the year 2002-03 consists of only equity component of Rs.929 lakhs. 50% of this equity component was considered as equity to allow 20% return adjusted for capacity utilisation of around 66%. For the balance 50% of the capital structure, interest cost calculated applying the rate of interest considered for the year 2004-05 is allowed as pass through. Rate of interest applicable for the year 2004-05 is considered because the operator has not incurred interest cost during the year 2002-03 and 2003-04.

Points made by TMILL in its review application
For the year 2002-03 Return On Equity (ROE) at 20% has been allowed considering notionally 50% as equity. Interest has been allowed at 3.64% (Rs. 17 lakhs) considering a notional debt of Rs. 464 lakhs whereas TMILL did not have any loan during that year. Therefore, ROE at 20% may be allowed on the full capital. Alternatively, if notional adjustment is to be made on debt equity ratio of 1:1, the interest cost should be allowed at least at the prevalent Prime Lending Rate (PLR) of the SBI in that year, which was ranging between 10% and 10.5%.

(b). Return on Equity for the year 2003-04

Tariff Order of October 2007 [Paragraph No. 13(xvi)(b)]
The debt equity ratio for the year 2003-04 is found to be around 0.73:0.27. The operator has reported that no-interest was paid during the year 2003-04 since the loan was taken in the end of the financial year. 20% return on equity component of capital structure declared by TMILL for the year 2003-04 is allowed adjusting for capacity utilisation of around 57%.

Points made by TMILL in its review application
As clarified by TMILL that the loan of Rs. 6.4 Crores was borrowed at the fag end of the financial year, no interest cost was incurred in 2003-04. Therefore, ROE on full equity should be allowed. Alternatively, if notional adjustment is to be made on debit equity ratio of 1:1, the interest cost should be allowed at the prevalent PLR of SBI in that year which was ranging between 10% and 10.5%.

(c). Return on Equity for the year 2004-05

Tariff Order of October 2007 [Paragraph No. 13(xvi)(c)]
The debt equity ratio for the year 2004-05 is found to be around 0.23:0.77. As stated above, the 20% return on equity allowable is subject to debt equity ratio of 1:1. Since the equity component is on the higher side, the entire capital structure for the year 2004-05 is assumed at a level of 1:1, in terms of debt & equity for the purpose of allowing return. Out of the total capital of Rs.3027 lakhs for the year 2004-05, return @ 20% is allowed on 50% of the total capital subject to adjustment on account of capacity utilisation of around 64%.

Points made by TMILL in its review application
The actual debt equity ratio for the year was 0.23: 0.77 which has been notionally adjusted in the ratio of 1:1 resulting in the debt portion increasing to Rs.15.13 Crores from actual of Rs.6.9 Crores correspondingly reducing the equity portion for the computation of ROE and interest on debt. Therefore, ROE may be allowed on the actual equity amount. Alternatively, the interest cost should be allowed at the prevalent PLR of the SBI in that year which was ranging between10% and 10.5% if the notional adjustment is to be made on debt equity ratio of 1:1.

Analysis

In case of private terminal operators, the return allowed prior to the year 2005-06 was based on the equity component of capital employed subject to a debt / equity ratio of 1:1. The TMILL has not challenged the approach adopted by this Authority in allowing return for the years prior to 2005-06 based on the equity component of capital employed subject to debt equity ratio of 1:1. Its claim is only to consider the return for that portion of equity in excess of the norm at the higher rate of interest at the Prime Lending Rate of SBI prevailing at relevant point of time.

For the first time, in November 2000 tariff Order of Nhava Sheva International Container Terminal Limited (NSICT), the first private terminal operator in India, this Authority evolved the approach of allowing the cost of respective sources of capital, accepting the 1:1 debt equity ratio. It was also decided in the same tariff Order that cost of debt at actuals would be allowed. Since the equity in excess of norm is treated as debt, it can get only the actual cost of debt. This policy was uniformly followed by this Authority in respect of private terminals.

Interest on the debt component of capital structure was allowed in the October 2007 Order at the actual cost of debt furnished by TMILL. There does not appear to be any case for allowing pass through at a rate higher than the actual cost reported by the operator.

X. Capacity Utilisation

Tariff Order of October 2007 [Paragraph No. 13(xviii)]

Initially, TMILL stated that the terminal is capable of handling 7.5 lakh tonnes of cargo annually considering the cargo mix. Subsequently, TMILL has conveyed the capacity of terminal at 6 lakh tonnes for export cargo and 10 lakh tonnes for import cargo. But, in the absence of workings for capacity calculation furnished by TMILL despite a specific requisition in this regard, capacity reported by of TMILL could not be verified. The KOPT has, reportedly based on government guidelines for updating port capacity, has stated that TMILL will be able to handle 10.7 lakh tonnes of cargo per annum at berth No. 12. Significantly, the reported capacity is stated to be based on the various cargo of varying output handled by TMILL and taking into consideration various cargo handling equipments deployed by TMILL. It has to be noted that the TMILL in its revised proposal dated 14 February 2007 has proposed an aggregate investment of Rs.5 crores in plant and machinery and Rs.2.24 crores in building during the years 2007-08 to 2009-10. The proposed investment may add to the capacity of the berth No. 12. TMILL has reported that the handling capacity will increase by 3 lakh tonnes, 1.50 lakh tonnes and 0.50 lakh tonnes during the years 2007-08 to 2009-10, respectively. Since the KOPT has not furnished its comments on this aspect of the revised proposal of TMILL, the increase in the capacity of the terminal due to the proposed investments could not be confirmed. The position reported by KOPT conveying the capacity of the terminal at 10.7 lakh tonnes is relied upon as the assessment is stated to be based on the Government guidelines. This capacity level is considered unaltered for all the years upto 2009-10. Considering the capacity of the terminal at 10.7 lakh tonnes per annum and taking into account the actual traffic of 7.09 lakhs, 6.12 lakhs and 6.82 lakh tonnes for the years 2002-03 to 2004-05, respectively, the capacity utilisation works out at 66.26%, 57.15% and 63.77% for the three years respectively.

Points made by TMILL in its review application

(i). The assessed capacity of 10.7 lakh tonnes per annum is based on the condition that the various cargo handling equipments including mobile harbour crane are deployed. As per Licence Agreement the deployment of various equipments and development of infrastructure at Berth No. 12 was phased for the first three years which was ultimately completed during March 2005. Hence, the assessed capacity of 10.70 lakh tonnes is applicable from 2005-06 onwards only. The

Authority has adopted this approach while deciding the capacity in the case of PSA SICAL (Order No. TAMP/52/2005-PSA SICAL, dated 23 August 2006).

(ii). During the equipping phase of first three years TMILL has been able to handle much more than minimum guaranteed throughput as per the Licence Agreement. Hence, at least 100% capacity utilization should be considered in the first three years and there should not be any deduction in allowable return on equity for underutilization of capacity.

Analysis

(i). The position reported by KOPT with regard to the capacity of the Berth No. 12 at 10.7 lakh tonnes was relied upon for all the years, from 2002-03 to 2009-10 in the Order dated 12.10.2007. There appears to be force in the argument of TMILL that the assessed capacity of 10.70 lakhs tonnes is applicable only from the year 2005-06 onwards, when full complement of facilities were developed.

(ii). The audited annual accounts for the years 2002-03 to 2004-05 show a capital addition in each of the years (Rs.2.17 crores in 2002-03, Rs.2.08 crores in 2003-04 and Rs.21.49 crores in 2004-05) indicating a gradual capacity addition over this period. The KOPT and TMILL differ on the assessed capacity of the berth no.12 for the years prior to 2005-06. But, it has to be recognised that the capacity assessed by KOPT is reportedly based on Government guidelines. Therefore, the capacity of berth no.12 at 5 lakhs tonnes, 7.60 lakhs tonnes and 7.60 lakhs tonnes for the years 2002-03 to 2004-05 respectively as now reported by KOPT is to be considered to determine the capacity utilisation by TMILL during the said three years. Considering the actual traffic of 7.09 lakhs tonnes, 6.11531 lakhs tonnes and 6.82329 lakhs tonnes for the said three years respectively, the revised capacity utilisation works out to 141.8%, 80.46% and 89.78% respectively. Consequently, return on the admissible part of equity is revised and allowed full for the year 2002-03, at 80.46% for the year 2003-04 and at 89.78% for the year 2004-05.

(iii). KOPT has conveyed capacity of berth for 2005-06 at 7.70 lakhs tonnes whereas TMILL has contended that its capacity is 10.7 lakhs tonnes from the year 2005-06. The actual traffic handled by TMILL during 2005-06 was 11.67 lakhs tonnes and, therefore, the capacity utilisation is more than 100% irrespective of the difference between KOPT and TMILL on the assessment of capacity. Even 60% capacity utilisation entitles TMILL for full return on capital employed in line with clause 2.9.10 of the revised tariff guidelines. Since full ROCE for the year 2005-06 has already been allowed, no further adjustment is warranted.

XI. Working Capital

(a). Security Deposit

Tariff Order of October 2007 [Paragraph No. 13(xviii)(c)(iv)]

TMILL has considered the security deposit for the leased land paid to KOPT as an item of current asset, for all the years under consideration. The security deposit is payable to KOPT as per the Scale of Rates of KOPT for allotment of land. The payment of security deposit does not appear to be governed by the LA entered into between operator and KOPT. To a query in this regard, TMILL did not confirm this position. The existing clause 2.9.9 of revised tariff guidelines does not include security deposit as an item of current asset. That being so, this Authority is not in a position to treat security deposit as an item of Current Asset.

Points made by TMILL in its review application

Clause 2.9.4 of the revised tariff guidelines defines working capital as current assets (excluding cash / deposit balance of funds) less current liabilities. In general definition of current assets security deposit is considered as an item of current assets. Clause 2.9.9. states that TAMP will examine the reasonableness

of the various items of working capital like inventory, sundry debtors, cash balances etc., to ensure that it is not unjustifiably expanded. This establishes that the working capital includes but is not limited to only three items namely inventory, sundry debtors and cash balances for which limits have been set. Exclusion of security deposit as an item of working capital has lead to an erroneous conclusion.

(b). Sundry Debtors

Tariff Order of October 2007 [Paragraph No. 13(xvii) (i)]
The relevant clause of Revised Tariff Guidelines has prescribed a limit on Sundry Debtor balances to 2 months estate income and railway terminal charges payable by Indian Railways. Since these items are not relevant for TMILL, the current asset element Sundry Debtors is considered as nil for 2005-06 to 2009-10.

Points made by TMILL in its review application
As per Clause 2.9.9. of the revised tariff guidelines sundry debtors are limited to two months estate income and railway terminal charges. Estate income includes short term / long term leases. The amount considered in the proposal on account of sundry debtors was two months of projected income from plots given on short term lease, which can be verified from the workings. Sundry debtors may be allowed as part of working capital as proposed.

(c). Inventory

Tariff Order of October 2007 [Paragraph No. 13(xvii)(c)(iii)]
TMILL has confirmed that it has projected the inventory value in line with the revised tariff guidelines for the years 2005-06 to 2009-10. 6 months of the repairs and maintenance cost has been considered as inventory under current assets by TMILL. The estimated inventory value is moderated based on the moderation effected in the estimates of repairs & maintenance cost.

Points made by TMILL in its review application
TMILL has requested to make correction in inventory value in the event of any revision in repairs and maintenance cost.

Analysis

(a). Clause 2.9.9 of the revised tariff guidelines does not include security deposit as an item of current asset. The approach adopted for admissibility of current assets is in line with clause 2.9.9. Since this approach is uniformly followed in determining working capital in all tariff cases so far decided by this Authority and no extraordinary circumstances at TMILL was found to emerge warranting an exceptional treatment only in its case, there was no case for effecting any deviation from the general approach followed so far.

(b). As per the provisions contained in the approved Scale of Rates of TMILL, lease rentals are payable by the users for allotment of land and covered sheds on short term basis. The land and covered space are used mainly for the purpose of storage of cargo.

The income from Estate of Major Port Trusts are rentals from lands and building allotted for various purposes and the revenue is booked under the separate head Estate Rentals. The short term licensing of operational area in the terminal does not come under Estate Activity and the relevant licence fee realized is to be recognised under cargo handling and storage income. Therefore, storage income does not get the benefit of clause 2.9.9 of the tariff guidelines.

With reference to the timing of collection of such charges it is noteworthy that Section 58 of the MPT Act, 1963 provides for immediate payment of port charges on the landing of goods incase of imports. Incase of exports and goods removed from port premises , the charges are payable before the goods are so removed or

shipped or transhipped. That being so, the TMILL may collect the charges as per the provision of MPT Act.
In view of the above position, there does not appear to be a case to allow Sundry debtors as part of working capital.
As a result of review of some of the expenditure items, the total operating expenses increase. Consequently, the normative level of cash balance at one month operating expenses also increase on which return is recalculated.

(c). Since there is no change in the estimated repairs and maintenance cost considered in the Order dated 12 October 2007, the question of review of inventory value does not arise at all.

XII. Interest cost for financial year 2005-06

Tariff Order of October 2007 [Paragraph No. 13(xvi)(d), (g)]

(i). The TMILL has stated in the cost statement for the years 2004-05 and 2005-06 that the surplus is before meeting interest cost. The segregated accounts are inclusive of interest cost as reported by TMILL. Since no schedule to the accounts is furnished, it could not be verified under which head interest payment is included. The total expenses shown in the cost statement furnished by TMILL tallies with that of the segregated accounts. That being so, the surplus depicted by the cost statement for the years 2004-05 and 2005-06 appears to be after interest payment only.

(ii). The segregated annual accounts do not explicitly show interest payment. Since no schedule to the accounts is furnished, break up of expenditure is not available to verify the head under which interest payment is shown. However, TMILL has declared Rs.38.61 lakhs as interest for the year 2005-06. Return on capital employed at 15% is admissible for the year 2005-06 as per revised tariff guidelines. That being so, the question of allowing interest as pass through does not arise. Therefore, the amount of Rs.38.61 lakhs as declared by operator is not allowed as pass through.

Points made by TMILL in its review application
In the cost statement submitted no interest cost has been considered for previous years. This can be verified from the expense working sheets submitted giving details of actual expenditure of previous years submitted along with the proposal. Any addition on this account will lead to erroneous results.

Analysis
There was a difference in the total expenditure as shown in the cost statement for the year 2005-06 furnished by TMILL and the amount reflected in the segregated audited annual accounts. The expenditure amount shown in the cost statement was less than the amount reflected by the accounts.

The segregated accounts for the year 2005-06 is inclusive of interest cost as reported by TMILL vide its letter dated 3 September 2007. In view of the difference between the cost statement and annual accounts, the interest cost of Rs.38.61 lakhs, reported by TMILL, was excluded from the total expenditure shown in the audited accounts. The balance amount was considered as cost subject to adjustment with regard to admissibility of royalty to the extent of second highest bidder and retrenchment of loss on repayment of foreign currency loan.

Return was allowed for the year 2005-06 on capital employed in terms of clause 2.9.1 of the tariff guidelines. It is to be borne in mind the ROCE method recognises the total value of the assets irrespective of the cost of financing their acquisition. Therefore, allowing interest as a pass through for the year 2005-06 in addition to return on capital employed is only a double counting which cannot be permitted.

XIII. Special Rate

Tariff Order of October 2007 [Paragraph No. 13(ix)(b)]

(i). In order to meet the liability on account of arrears of salary, wages and retirement benefits arising out of various Government orders and accrued upto 31 March 2000 at KOPT, this Authority approved 10% special rate on the various charges notified in the Scale of Rates of KOPT in April 2001. The liability is confined to KOPT and therefore, only the operations carried out by KOPT can generate the revenue required to cover this liability. The TMILL has reported that it had collected Rs.43,40,665/- during the years 2002-03 to 2005-06 towards levy of Special Rate and assured in August 2006 that it shall not levy the special rate.

(ii). KOPT is aware that only the port is authorized to levy the special rate. The port has reportedly received revenue share from TMILL on the special rate also levied by the operator. KOPT should have instructed its licensee to stop the levy of special rate forthwith. Strangely, KOPT has objected to the retention of amount collected by TMILL and pitched a demand for the transfer of the amount to KOPT. There cannot be any debate on whether TMILL is entitled to retain the amount collected by levying special rate as the collection itself is unauthorized which, therefore, should be set off fully in tariff of TMILL for the future period. The income on this account is excluded from the operating income of the respective years and shown separately in the cost statement, which is set of fully in the tariff fixed.

Points made by TMILL in its review application

TMILL has stated that KOPT has demanded the special rate collected by TMILL This recovery has been taken into account while computing the surplus for the previous period which has been fully set off while deciding the tariff. This gives an impression that TAMP is not in favour of this amount being remitted to KOPT. TMILL has sought the advice of the Authority to respond to KOPT.

Analysis

There is no ambiguity in this regard in the Order dated 12 October 2007. Nor does TMILL point out any error in this regard in the Order dated 12 October 2007. Since this proceedings is limited to review of error apparent on the face of records relating to Order dated 12 October 2007, the points raised by TMILL do not appear to be relevant for review.

The KOPT, at the joint hearing held in this case, requested that the loss arising to it due to non-refund of the collection made by TMILL on this account, should be recognised by this Authority. According to KOPT, it has recognised in its books the income from this special charge and accordingly reported the special purpose accounts maintained in respect of the special charge, based on which this Authority had already ordered discontinuance of the special charge by KOPT. It is noteworthy that the total collection on account of special charges of KOPT made by TMILL was around Rs.43.40 lakhs. It is open for KOPT to make a suitable tariff proposal with justifications to adjust the 'loss' claimed by it.

XIV. Set off of past surplus

Tariff Order of October 2007 (Paragraph no. 13(xx)

The analysis of actual performance of TMILL for the years 2002-03 to September 2007 shows a net surplus to the tune of Rs.2146.93 lakhs after maximum permissible return including 10% special levy during a period of four years from 2002-03 to 2005-06. The analysis further shows a deficit position after admissible return to the extent of Rs.46.36 lakhs in the year 2006-07 and Rs.90.74 lakhs during the first half of the year 2007-08. After adjusting the total deficit of Rs.137.10 lakhs with the net surplus of Rs.2146.93 lakhs, the net surplus will be Rs.2009.83 lakhs. This amount is considered in equal proportion for set off in each of the years 2007-08 (2^{nd} half) to 2009-10.

Points made by TMILL in the review application.

The surplus for the period upto September 2007 may not be set off in full in this exercise of tariff setting which is based on only 2 ½ years projection. The mount of re-assessed surplus may be set off during the remaining period of the license.

Analysis

(i). The need to assess and adjust the past surplus arose in this case as TMILL operated its facility since 2002-03 without the Scale of Rates notified for its operation by this Authority. Strictly speaking, it was an unauthorised act not conforming to the tariff setting arrangement prescribed in the MPT Act. This Authority took a lenient view only to assess and adjust the past surplus, as the act of TMILL appeared to be, as pointed out by KOPT, under mistaken identity. It is to be borne in mind that the tariff guidelines are not developed to regularise unauthorised actions and, therefore, they may not contain any explicit provision relating to adjustment of past surplus arising in an exceptional circumstance like the one faced in the TMILL case.

(ii). TMILL has pleaded to extend the period of adjustment over the entire project period. The approach of adjustment of past surplus in the immediate tariff cycle was consistently followed by this Authority in various tariff cases pertaining to major port trusts and private terminals thereat. To name a few, such approach was adopted in the cases of Kolkata Port Trust (2006), South West Port Limited (2006), Chennai Container Terminal Limited (2007), etc. Following the precedence available a similar approach was adopted in the TMILL case.

(iii). Clause 2.13 of the tariff guidelines dealing with adjustment of past surplus / deficit provides for setting off of such effect prospectively, when such effect arises out of estimation error. Past surplus / deficit arose in the TMILL case not on account of estimation error, but due to its operation of the facility since 2002-03 without the approved Scale of Rates. The argument of TMILL about the change in the user profile in the past and for the future deserves serious consideration. The approach of adjusting past surplus in future tariff without refunding to the concerned users who had paid excess tariff, was followed since many terminals found it difficult to identify the users and effecting refund to them. In this case, TMILL agrees to refund the excess collection of tariff in the past to the concerned users. Further, the KOPT has also endorsed this approach. Besides, TMILL has also raised a point about wide variation in tariff due to adjustment of past surplus in future tariff. In the circumstance, this Authority is inclined to allow TMILL to refund the excess tariff collected by it in the past to the concerned users.

(iv). (a). As correctly pointed out by KOPT, excess collection made by TMILL in the past cannot be an interest free source of funding the activities of TMILL. That being so, there is merit in the suggestion of KOPT about levying interest on the past accruals. Therefore, while refunding excess collection TMILL should pay interest from the date of payment of the initial bill by the concerned user till the date of refund of excess is made to him.

(b). The refund of excess collection made by TMILL in the past is to be made. Though in a different context, the TMILL has made a mention about the Prime Lending Rate (PLR) in its review application that prevailed in the range of 10% to 10.5% in the past. The major port trusts and private terminals thereat are required to pay interest at 2% above the PLR on delayed refunds. Therefore, it may be reasonable to consider interest at 12% per annum on the past surplus, both during its accrual period and the refund period. Since the interest liability is yet to be discharged, interest at 12% compounded annually is payable by TMILL on the amount to be refunded.

(v). The year-wise actual operating income realized by TMILL during the period 2002-03 to 2007-08 (1st half) varies. The past surplus earned by TMILL for the corresponding period also varies. It will be cumbersome to modify the tariff book of TMILL retrospectively for every year for the purpose of refund to the concerned users.

In the normal tariff setting / review process, the average of the estimated net surplus / deficit (after admissible cost and permissible return) as a percentage of estimated operating income of the future years in the tariff validity cycle is considered to allow increase or reduce the estimated tariff. Similar approach is adopted to calculate average net surplus earned by the TMILL in the past over and above the admissible cost and permissible return during the relevant period as a percentage of operating income, the calculation of which is given below:

(Rupees in Lakhs)

Particulars	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08 (1st half)	Total
(I) Total Operating Income	1468.83	1427.35	1776.49	2650.58	1979.07	1136.09	**10438.41**
(II) Surplus / deficit	497.17	579.90	418.09	487.29	-46.36	-204.36	**1731.73**
(III) Special Levy	8.09	3.24	7.22	24.86	0.00	0.00	**43.41**
(IV) Total excess accrual (II + III)	505.26	583.14	425.31	512.15	-46.36	-204.36	**1775.14**
(V) Excess Collection as a % of operating income	34.40%	40.85%	23.94%	19.32%	-2.34%	-17.99%	**-**
Average net surplus as a percentage of operating income	**16.36%**						

(vi). It is to be noted that the past surplus of Rs.2009.83 lakhs assessed for the past period is reduced to Rs.1775.14 lakhs in view of the reviewed position as shown in the table under para 9.1 below.

(vii). The TMILL should refund the excess collection at 16.36% of the bill amount made by it during the period from the commencement of its operation till 23 November 2007 (i.e. till date on which the revised Scale of Rates fixed by this Authority is to take effect) to the concerned parties within three months from the date of this Order along with interest at 12% compounded annually and furnish a duly audited accounts in this regard within six months from the date of this Order to the KOPT for verification. The TMILL should also furnish details of the refund which could not be made due to non-identification of the concerned parties. The KOPT is requested to verify the details to be furnished by the TMILL and furnish its report to this Authority so that this Authority can decide about adjustment of the refunds which could not materialize.

9.1. In the light of the analysis given above, the Order of 12 October 2007 is to be revised in respect of the following items:

(Rs. in lakhs)

Sl. No.	Items	Effect of review					Total from 2nd half of 2007-08 to 2009-10
		2002-03 to 2004-05	2007-08		2008-09	2009-10	
			1st Half	2nd half			
1.	Income from handling charges for fertiliser considered earlier but now excluded.	0.00	93.75	93.75	187.50	197.37	478.62
2.	Expenses towards on-board supervision of containers now considered as cost.	0.00	0.50	0.50	1.05	1.11	2.66
3.	Moderation of equipment running cost on account of exclusion of oil and lubricant cost for handling fertilisers	0.00	0.93	0.93	3.42	3.81	8.16
4.	Lease rentals now allowed on 9000 sq. mtrs of land.	0.00	0.00	7.52	15.41	16.18	39.11
5.	Insurance @ 1.5% considered on the investment of Rs.1953 lakhs.	0.00	14.63	14.65	29.29	29.29	73.23
6.	Escalation allowed on LSD, unlashing and survey expenses.	0.00	3.58	3.60	15.71	27.60	46.91
7.	Increase in the amount written off on account of inclusion of NRNA deposit of Rs.30.07 lakhs for 9000 sq. mtrs of land.	0.00	0.00	0.64	1.28	1.28	3.20

Sl. No.	Items	Effect of review					Total from 2nd half of 2007-08 to 2009-10
		2002-03 to 2004-05	2007-08		2008-09	2009-10	
			1st Half	2nd half			
8.	Increase in return on account of - Unamortised balance of NRNA deposit of 30.07 lakhs increase in the cash balance due to increase in operating expenses.	0.00 0.00	0.00 0.00	4.71 0.31	4.50 0.77	4.30 0.97	13.51 2.05
9.	Increase in return due to higher capacity utilisation allowed at 31.34 lakhs, 11.00 lakhs and 78.74 lakhs for the years 2002-03 to 2004-05 respectively	121.08	0.00	0.00	0.00	0.00	0.00
10.	Exclusion of past surplus adjusted in future tariff in October 2007.	0.00	0.00	401.97	803.93	803.93	2009.83
		121.08	**113.39**	**528.58**	**1062.86**	**1085.84**	**2677.28**
	TOTAL	**234.68**					

9.2. The cost statement of Order dated 12 October 2007 has been modified accordingly and the modified cost statement is attached as **Annex-I.** The result disclosed by cost statement at the tariff levied at the (then) existing KOPT Scale of Rates is summarised as shown in the table given herein under:

SUMMARY OF THE RESULTS OF TMILL AT THE EXISTING LEVEL OF TARIFF

Sr. No	Particulars	Operating Income (Rs. in crores)				Net Deficit(-) (Rs. in crores)				Net Deficit(-) as a % of operating Income			Average Surplus/ Deficit %
		2007-08*	2008-09	2009-10	Total	2007-08*	2008-09	2009-10	Total	2007-08*	2008-09	2009-10	
1	**TMILL as a whole**	11.36	24.78	25.95	62.09	-2.17	-4.55	-4.57	-11.29	-19.13%	-18.35%	-17.61%	-18.36%

*For a period of six months from October 07 to March 08.

In the October 2007 Order, the financial / cost position of TMILL for the future 2½ year period was in deficit in stand alone basis. Since the past surplus was set off in the future tariff, the financial / cost position resulted in surplus position warranting downward revision of 20%. Now, the TMILL is allowed to refund the past surplus. Therefore, there is no adjustment of past surplus in the future tariff. The TMILL continues to be in deficit. The cost position warrants upward revision of 18.36%. Therefore, the Scale of Rates of TMILL is to be fixed by effecting an increase of 18% over the existing level of cargo related charges except the demurrage rates, equipment hire charges and charges for supply of unskilled labour.

10. In the result, and for the reasons given above, and based on a collective application of mind, this Authority approves the revised Scale of Rates of TMILL which is attached as **Annex-II**. This Scale of Rates shall come into force from the date of the Scale of Rates approved vide Order dated 12 October 2007 would have been implemented, but for the interim stay granted by the Hon'ble High Court of Calcutta. Since there is an interim Order of the High Court of Kolkatta in operation, the revised Scale of Rates is implementable subject to vacation or expiry of the said interim Order, whichever is earlier.

11.1. In all the cases of billing made from commencement of operation till 23 November 2007, the TMILL is directed to refund to the concerned parties at 16.36% of the bill amount with interest calculated at 12% compounded annually from the date of payment of the bill by the concerned user till the date of refund of excess is made to him.

11.2. The TMILL is directed to furnish the audited accounts of refund in the manner explained in paragraph XIV (vii) above.

(Brahm Dutt)
Chairman