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Tariff Authority for Major Ports

G. No.106

New Delhi,

23 March 2016

NOTIFICATION

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from the V.O. Chidambaranar Port Trust (VOCPT) for revision of lease rent of the land leased out to M/s. Southern Petrochemical Industries Corporation Limited at VOC Wharf for installation of phosphoric acid storage tanks as in the Order appended hereto.

(T.S. Balasubramanian)

Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/38/2014-VOCPT

V. O. Chidambaranar Port Trust

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Applicant

QUORUM

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

O R D E R

(Passed on this 27th day of February 2016)

This case relates to a proposal dated 24 July 2014 received from the V.O. Chidambaranar Port Trust (VOCPT) for revision of lease rent for the land leased out to M/s. Southern Petrochemical Industries Corporation Limited (SPIC) at VOC Wharf for installation of phosphoric acid storage tanks.

2. The lease rent of the land allotted by VOCPT to SPIC was last approved by this Authority in August 2007. The lease rent approved by this Authority in the said Order is ₹ 2386 per sq.mtr. per annum with retrospective effect from 1 January 2007. The validity of the rate approved was made coterminus with the expiry of the respective lease agreement entered between VOCPT and SPIC i.e. lease of one piece of land expired in April 2009 and another piece of land expired in January 2011.

3.1. The VOCPT has made the following points in its proposal:

- (i). The SPIC was allotted 2325 sq.mtr. and 1085 sq.mtr. of land in the VOCPT wharf area with the approval of Government of India on long term lease for a period of 30 years for installation of Phosphoric Acid Storage Tanks. The pieces of land were allotted with the effect from 1 April 1979 and 20 January 1981 respectively.
- (ii). The Lease Deed entered by VOCPT with the SPIC, provides for upward revision in the lease rent with effect from 01.01.1997 and thereafter on expiry of every 5 year.
- (iii). The lease period for the 1st allotment has expired on 31.03.2009 and for the 2nd allotment expired on 19.01.2011. M/s.SPIC Ltd. has requested the port for renewal of the lease period beyond the respective dates of expiry for 30 years for both allotments.
- (iv). The matter was placed before the Board and the Board resolved vide its Resolution No.92 in the meeting held on 24.02.2010 to extend the lease period of the 1st allotment from 01.04.2009 to 28.02.2010 and thereafter to renew on short term licence basis to a minimum period upto 19.01.2011 to coincide with the expiry date of licence period of second allotment and to process the renewal for the lease period beyond 19.01.2011.
- (v). Again Board vide its Resolution No.104 in the meeting held on 21.03.2011 resolved to take up the matter regarding the renewal of lease for the two allotments for storage tanks for 30 years with the Ministry. Accordingly, Ministry has been requested vide Port's letter dated 14.05.2011 to accord approval for the renewal of the lease in respect of the above said two lands allotted to M/s.SPIC Ltd. for further period of 30 years from 20.01.2011. Ministry vide D.O. letter No.PD-17011/28/2011-PT(Pt) dated 20.01.2014 instructed the port to take renewal action of the already expired long term allotments as per Land Policy Guidelines 2014.

- (vi). As the validity of the current lease rate for the Phosphoric Acid Storage Tank is already over on 19.01.2011, it was proposed to revise the lease rent applicable for further period from 20.01.2011.
- (vii). The port has forwarded a copy of the proceedings of the Land Allotment Committee held on 21 February 2014 which show that the LAC was under the Chairmanship of Deputy Chairman and comprising of other members viz. Chief Engineer, Sr. Deputy FA & CAO and Deputy Traffic Manager.

The proposal for revision of lease rate to ₹3,495/- per sqm per annum and 2% escalation for subsequent years for a period of 5 years from 20.01.2011 for the land lease out to M/s.SPIC Ltd. was placed before the Land Allotment Committee held on 21 February 2014 as per the calculation furnished below:

- (a). The competitive price bid for the land outside the wharf area considered by TAMP during 2007 revision vide TAMP Order No. TAMP/13/2007-TPT dated 07.08.2007 was ₹3,505/ sqm/ 30 years towards upfront premium basis.
- (b). Highest offer received for Tank Farm during 2010 is ₹5,134/ sqm/ 30 years.
- (c). The % increase from ₹3,505/- to ₹5,134 is 46.48%.
- (d). Existing rate as on 19.01.2011 for Phosphoric Acid Storage Tank is ₹2,386/ sqm/ annum.
- (e). Rate arrived (Reserve Price) with 46.48% increase over the existing rate as in Sl. No.d [Sl. No.(d) x 1.4648] ₹3,495/ sqm/ annum.

3.2. The Committee recommended the above proposal and submitted the same for Board's approval. The Board has accorded approval for the same in the Board Meeting held on 30.05.2014.

3.3. The VOCPT has, thus, requested to revise lease rent to ₹3,495/ sqm/ annum and 2% escalation for subsequent years in respect of the lands leased to M/s.SPIC Ltd. for the Phosphoric Acid Storage Tank at VOC wharf for a further period of 5 years from 20.02.2011 to 19.01.2016 under Section 49 of MPT Act 1963.

4.1. On preliminary scrutiny of the proposal, the VOCPT was requested to furnish additional information /clarification on a few points vide our letter dated 20 August 2014 and address the observations made on the proposal and file a revised proposal for revision of Lease Rentals for the land leased out to M/s. SPIC Ltd. complying with Land Policy Guidelines, 2014 issued by Ministry of Shipping.

4.2. In response, the VOCPT vide its letter dated 3 November 2014 has furnished its response to the information/clarification sought by us on the subject proposal. A summary of the information/ clarification sought by us and reply furnished by VOCPT thereon is tabulated below:

Sl. No.	Information / Clarification sought by us	Reply furnished by VOCPT
(i).	(a). The VOCPT has arrived at the proposed lease rental for land leased out to M/s.Southern Petrochemical Industries Corporation Limited (SPIC Ltd.) at ₹3,495 per sq. mtr. per annum considering 46.48% increase over the lease rent last approved by the Authority at ₹2,386 per sq. mtr. per annum vide Order No.TAMP/13/2007-TPT dated 7 August 2007. The said 46.48% is arrived by VOCPT considering the highest	(a). Factual

		The proposed rate of ₹3,495/ sqm/ annum is arrived with 46.48% over the existing rate of ₹2,386/ sqm/ annum as on 19.01.2011 comparing % increase of competitive price bid received during 2007 (₹3,505/ sqm/ 30 years) and during 2010 (₹5,134/ sqm/ 30 years). Now, it is submitted that the highest offer received during the year 2010 for Tank Farm which is 5,134/ sqm/ annum and is adopted for the subject land as lease rent. Subsequently, as per Land Policy Guidelines 2014, the recommendations of LAC and approval of Board is furnished by the Port vide its letter dt.2.4.2015.
(ii).	The VOCPT in its separate proposal filed for revision of lease rent of its land which has already been disposed of by the Authority vide Order No.TAMP/6/2012-VOCPT dated 4 April 2014 had furnished a copy of the land valuation report pertaining to the year 2011 by valuer appointed by VOCPT. The VOCPT to clarify whether this land valuation report covered valuation of land in respect of land leased to M/s.SPIC Ltd. also. If so, the port may examine whether the valuation of land in the said report under all the options can be made use of in the current proposal. If not, the VOCPT to undertake valuation of the market value of land leased to M/s.SPIC Ltd. under all the options and seek recommendations of LAC of the VOCPT to comply with the provisions prescribed in the Land Policy Guidelines of 2014, as stated in query no.(i) above.	The Valuation report pertaining to the year 2011 covers the valuation of land in general in respect of land in Zone A. The reason for not finding the valuation of land under all the options has already been indicated in para (i) (c) above.
(iii).	The proposal of the VOCPT does not include conditionalities governing the proposed lease rent for Phosphoric Acid Storage Tank leased to SPIC Ltd. The VOCPT to incorporate the conditionalities governing the proposed lease rent for Phosphoric Acid Storage Tank leased to M/s.SPIC Ltd. The Authority is mandated not only to prescribe Scale of Rates but also conditionalities governing the application of rates.	The conditionalities are generally applicable as per Land Policy Guidelines from time to time and recognized in the respective Lease Agreement. Hence, separate guidelines are not applicable.
(iv).	The VOCPT has sought approval to the revised rates retrospectively w.e.f. 20 January 2011. In this context, the VOCPT to confirm that the lease agreement with M/s.SPIC Ltd. contain a clause allowing for retrospective revision of rental.	The existing lease agreement has expired on 19.01.2011. The said agreement contained a provision to revise the lease rental every five years. The proposal for renewal was submitted to Ministry vide Port's letter dated 14.05.2011. Ministry vide letter dated 20.01.2014 returned the proposal directing Port to go for tender as per Land Policy 2014. To regulate the lease rent for the previous period, the proposal is submitted.

(v).	The VOCPT in its proposal at para 3 has stated that the Ministry vide D.O. Lr. No.PD-17011/28/2011-PT (Pt) dated 20.01.2014 instructed the Port to take renewal action of the already expired long term allotments as per Land Policy Guidelines 2014. A copy of the said letter may please be forwarded for our records along with a brief note on the action taken by VOCPT on the instruction of MOS with regard to renewal of lease for the land allotted to SPIC.	Copy of the Ministry's letter D.O.Lr.No.PD-17011/28/2011-PT (pt) dated 20.01.2014 instructing the port to take renewal action on the already expired long term allotments as per Land Policy Guidelines 2014 is furnished.
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4.5. Submitting the above, the VOCPT has requested to consider the proposal submitted by VOCPT for revision of lease rent at ₹5,134/ sqm/ annum for a period of five years from 20.01.2011 to 19.01.2016 with 2% escalation of every subsequent year.

5.1. On perusing the reply furnished by VOCPT vide its letter dated 3 November 2014, it is seen that the VOCPT has not furnished a copy of the recommendations of Land Allotment Committee and copy of the Board approval. Since both these documents were necessary to initiate consultation process on the subject proposal, the VOCPT vide our letter dated 23 December 2014 was requested to furnish above mentioned documents along with clarification on certain points which are summarised below:

- (i). The VOCPT while responding to our query at 4.2.(i)(c) above has submitted that as per the Land policy Guidelines of 2014, the recommendations of Land Allotment Committee (LAC) and approval of Board will be obtained and submitted to the Authority. In the meanwhile, the VOCPT has in the concluding para, sought approval of the proposed lease rent of ₹5134/- per sq. mtrs. per annum for the period of five years from 2011 to 2016.

As per para 18(c) read with 18(a) and 18(b) of the Land Policy Guidelines for Major Port 2014, the concerned Major Port Trust should file a proposal to Tariff Authority for Major Ports (TAMP) to notify market value of land which has to be based on the recommendation of the LAC. Further, as per 18(b) and 18(c) of the Land Policy Guidelines, Reserve price in terms of annual lease rent which should not less than 6% of market value of land and annual escalation factor (which should not be less than 2%) has by Board of concerned Port Trust.

Thus, as per the Land Policy Guidelines of 2014, the recommendation of LAC and Board approval are required to take up the proposal of the VOCPT. These documents are also included in the check list of documents to be furnished for revision of lease rent, forwarded to all Major Port Trust including VOCPT vide our letter no.TAMP/38/2014-VOCPT dated 20 August 2014. The proposal of VOCPT is not accompanied with the copy of the recommendation of the LAC and the Board approval which are pre-requisite for revision of lease rental.

The VOCPT was, therefore, requested to forward a copy each of the recommendations of LAC and copy of the Board approval immediately to enable the Authority to proceed further.

- (ii). It was noted that while furnishing the reply to our queries, the VOCPT has proposed lease rent based on the highest offer received for Tank Farm in the year 2010 i.e. ₹5134/- sq. mtr. per annum as against lease rent of ₹3495/- sq. mtr. per annum proposed by it earlier. As per para 18(a) (iii) of the Land Policy Guidelines, 2014, while arriving at land valuation based on the highest accepted tender cum auction rate for similar transaction, the land valuation should be updated based on the annual escalation factor approved by the Board. The VOCPT has not updated the land valuation with applicable annual escalation on the highest tender received. Hence, the VOCPT was requested to confirm compliance of the said

provision of the guidelines while filing its complete proposal with relevant documents as brought out in para 4.1 above.

5.2. In response, the VOCPT vide its letter dated 4 March 2015 has furnished its reply. The VOCPT informed that the amount of ₹.5134 per sqm/annum is inadvertently mentioned in the letter instead of ₹3495 per sqm/annum.

5.3. It is seen from the reply furnished by the VOCPT that the port had not submitted the documents mentioned in above para 5.1 (i) and has not furnished its reply completely. Accordingly, a letter dated 11 March 2015 was addressed to VOCPT reiterating the points not addressed by the VOCPT.

6. The VOCPT vide its letter dated 2 April 2015 has furnished its response which is summarized below:

- (i). The VOCPT has reiterated that it has mentioned the lease rent of ₹5,134/- per sqm/ annum inadvertently in its letter dated 3 November 2014 instead of ₹3,495/- per sqm/ annum.
- (ii). A copy each of the recommendation of Land Allotment Commitment held on 21.02.2014 and copy of the approval of Board in the meeting held as on 30.05.2015 is furnished.
- (iii). Considering the above fact, the Port has requested to consider its proposal for the fixation of lease rent of ₹3,495/sqm/annum and 2% of escalation for subsequent years in respect of the land leased to M/s. SPIC Ltd. for a further period of 5 years from 20.02.2011 to 19.01.2016 under Section 49 MPT Act 1963, and pass necessary Orders in this regard.

7. In accordance with the consultative procedure prescribed, a copy each of the VOCPT proposal dated 24 July 2014 and VOCPT letter dated 2 April 2015 was forwarded to the SPIC Ltd. seeking their comments. The comments received from the SPIC Ltd. was forwarded to VOCPT as feedback information. The VOCPT has furnished its comments recently vide its letter dated 25 February 2016.

8. A joint hearing in this case was held on 26 June 2015 at the VOCPT premises in Tuticorin. The VOCPT made a power point presentation of its proposal. At the joint hearing, the VOCPT and the SPIC have made their submissions.

9.1. The VOCPT was requested to furnish additional information/ clarifications on some points vide our letter dated 9 July 2015 arising out of VOCPT letter dated 3 November 2014 and the Writ Petition filed by the SPIC in the year 2015. After a reminder letter dated 30 July 2015, the VOCPT vide its letter dated 18 September 2015 has furnished its reply on additional information/ clarifications sought by us. A summary of additional information/ clarifications sought by us and the response of the VOCPT thereon are tabulated below:

Sl. No.	Information/ clarification sought by us	Response of VOCPT
A.	General:	
1.	In our letter of even number dated 20 August 2014, the VOCPT at query no.2(iv) was requested to clarify whether the lease agreement entered by VOCPT with SPIC contains a clause allowing for retrospective revision of rental. In this regard, from the reply furnished by the VOCPT vide its letter dated 3 November 2014, it is understood that the existing lease agreement with SPIC has expired on 19 January 2011 and the Port has not entered into any lease agreement with SPIC. In this context, the	(i). The lease period for the 1st allotment had expired on 31.03.2009 and for the 2nd allotment lease period expired on 19.01.2011. M/s.SPIC Ltd. requested the port for renewal of the lease period beyond the respective dates of expiry for another 30 years for both allotments. The matter was placed before the Board and Board resolved the following vide its Resolution No.92 held on 24.02.2010. (a) extend the lease period of the 1st

	VOCPT to furnish information/ clarification on the following: (i). Explain the basis for seeking revision of lease rent with retrospective effect from 20 January 2011 when no lease agreement is reported to exist between VOCPT and SPIC for the period beyond 19 January 2011. (ii). In view of the position brought out by the VOCPT that there is no lease agreement prevailing with SPIC and VOCPT as on date, it is examined whether it will be appropriate to prescribe the revised lease rent indicating the name of the lessee i.e. SPIC. The VOCPT to, indicate the exact description in terms of area, zone of the land and the purpose thereof for which the lease rent/ reserve price is to be approved by the Authority.	allotment from 01.04.2009 to 28.02.2010 and thereafter to renew on short term licence basis to a minimum period upto 19.01.2011 to match with the expiry date of licence period of 2nd allotment and (b) to process the renewal of the lease period for both the allotments beyond 19.01.2011. A fresh lease agreement will be executed on renewal of the lease period with the approval of the Competent Authority. (ii). Board vide Reso.No:104 (Agenda No.28) in its meeting held on 21.03.2011 resolved to take up the matter regarding the renewal of lease for the two allotments for storage tanks for 30 years with the Ministry. Accordingly, Ministry has been requested vide port's letter dated 14.05.2011 to accord approval for the renewal of the lease in respect of the above said two lands allotted to M/s.SPIC Ltd. for the Phosphoric Acid Storage Tank at VOC Wharf for a further period of 30 years from 20.01.2011. Ministry vide D.O. Lr. No:PD-17011/28/2011-PT dated 20.01.2014 instructed the port to take renewal action of the already expired long term allotments as per Land Policy Guidelines 2014. Further, as per clause 11.3 (c) of amendment to Land Policy Guidelines 2014 issued by Ministry vide letter dated 17.07.2015, renewal of existing/earlier leases shall be done through tender-cum-auction methodology. Board vide Reso. No.265 of the meeting dated 21.01.2015 (Agenda Item No.:17) accorded approval to follow tender-cum-auction in respect of land allotted to M/s.SPIC for phosphoric acid storage tanks (2 Nos.) and to extend the lease period upto the finalization of the tender. Hence, renewal for the above said land from 20.01.2011 till finalization of tender is to be regularized by fixing the lease rent for the above period. In view of the above, proposal to revise the lease rent indicating the name of the lessee (i.e.) SPIC is in order. Area allotted to M/s.SPIC Ltd. for Phosphoric Acid storage tank inside Green Gate (i.e.) in Wharf Area (Custom Bond Area) is 1st allotment 2325 sqm and 2nd allotment 1085 sqm.
2.	The SPIC has filed a Writ Petition Nos.5199 / 2015 and 5200 / 2015 in the High Court of Madras at its Madurai Bench challenging the lease rent revised by the Authority retrospectively vide Order	M/s.SPIC has filed Writ Petitions in the Madurai Bench of Madras High Court as detailed below: (i). M/s.SPIC has filed a case in

	No.TAMP/6/2012-VOCPT dated 4 April 2014. The VOCPT, therefore, to confirm that the revision of lease rent sought for the extent of land in the current proposal will not be hit by said Writ Petitions or any other pending litigation, if any. Also, confirm that there is nothing that restrains the Authority to revise the lease rent on the subject proposal in any of the pending litigations filed by M/s.SPIC.	No.:MP(MD) 2/2015 in WP(MD) No.5199 of 2015 for collection of revised lease rent as approved by the TAMP in respect of Ammonia Storage tank which is located outside Green Gate. (ii). Also, the firm has filed another case in No:MP(MD) 2/2015 in WP(MD) No:5200 of 2015 for collection of revised lease rent as approved by TAMP in respect of land allotted to Railways siding leading to M/s.SPIC factory. (iii). The third case was filed by M/s.SPIC Ltd. in No: MP(MD) No.2 of 2015 in WP (MD) No.2918 of 2015 for the relief of restraining the Port Trust from interfering with peaceful possession of land allotted to M/s.SPIC by the Port Trust for storage of Phosphoric Acid tank. The clarification sought by TAMP under Para 2 has been referred to Port's Legal Consultant and opinion furnished is given below: The first two writ petitions are regarding revision of lease rent and the 3rd writ petition is to restrain the Port Trust from dispossessing M/s.SPIC from the allotted land. The reliefs sought for in the above writ petitions will not have any bearing on the revision of lease rent as sought for by the Port Trust and in no way restrain the Port Trust from taking renewal action as per Land Policy Guidelines 2014. In view of the above, it is stated that there is no constrain for the Authority to consider the proposal furnished by the VOCPT for revision of lease rent for the land allotted to M/s.SPIC Ltd. for phosphoric acid tank as it is for the area inside the Green gate & the WPs filed by M/s.SPIC do not cover the area for which VOCPT has sought rate revision for M/s.SPIC from TAMP.
3.	For arriving at the proposed lease rent, the VOCPT has applied 46.48% on ₹2386/- Sq. Mtr./ annum, the lease rent approved by the Authority in the lease rent Order dated on 19 January 2011. This percentage of 46.48% is arrived by VOCPT by comparing the competitive bid received for land outside the wharf area during 2007 i.e. ₹3505/- Sq. Mtr. as considered in the last revision vis-à-vis the highest offer received for tank farm in the year 2010 ₹5134/- Sq. Mtr. for 30 years (i.e. $5134-3505 / 3505 = 46.48\%$). The approach followed by VOCPT is not in line	As the land has been leased to M/s.SPIC Ltd. for storage of Phosphoric Acid Tanks which is in the Wharf Area (Operational area), it is not possible to assess the market value of land as per Clause 18(a) of the Land Policy Guidelines. Therefore, VOCPT submitted the proposal under method (c) i.e. Highest accepted tender rate of Port land for similar transactions, updated on the basis of annual escalation of 2% as per Land Policy Guidelines. Port has assessed the proposed lease rate to M/s.SPIC for Phosphoric Acid

	with the clause 18(a) of the Land Policy Guidelines 2014 which stipulates to arrive at lease rent applying 6% return on the highest market land value to be assessed based on five factors. The VOCPT may please show how does its proposal fit into the Land Policy Guidelines of 2014.	Tank based on the tender rate received for tank form allotment during the year 2010. The competitive price bid considered by TAMP during 2007 revision was ₹3,505/ sqm/ 30 years. The highest offer received for Tank Farm during 2010 was ₹5,134/ sqm/ 30 years which was 46.48% increase from ₹3,505/- adopted in 2007 by the Authority. Hence, the rate of ₹3,495/ sqm/ annum is arrived at with 46.48% increase over the existing rate of ₹2,386/ sqm/ annum as on 19.01.2011. It is pointed out that if the quoted rate is ₹3,505/ sqm/ 30 years then the reserve price will be ₹193.20/ sqm/ annum and if the quoted rate is ₹5,134/ sqm/ 30 years then the reserve price will be ₹283/ sqm/ annum. Calculation for finding out the reserve price per sqm per annum from the rate quoted per sqm for 30 years is furnished. Further, it is stated that VOCPT is not able to make a proposal by applying 6% return on the highest market value of land since the allotted land is inside the Green Gate (Custom Bond area) in the wharf area. In view of the above, the proposal submitted to Authority is considered.
4.	The VOCPT has proposed the lease rent of ₹3,495/ sqm/ annum for lands leased to M/s.SPIC Ltd., for the Phosphoric Acid Storage Tank at VOC wharf for a further period of 5 years from 20.02.2011 to 19.01.2016. The VOCPT has reported that highest offer received for Tank Farm during 2010 is ₹5,134/ sqm/ annum for 30 years. Prima facie the proposed lease rental of ₹3,495/ sqm/ annum appears to be lower than the highest offer received for 30 years of ₹5134/ sq. mtr./ annum. Clause 18 (a) of Land Policy Guidelines 2014 requires to take into account highest of the five factors to determine the latest market value of Port land and in case the Land Allotment Committee is not choosing the highest factor, the reasons for the same has to be recorded in writing. The reasons for not choosing the highest lease value is not recorded in the report of LAC or in the proposal of VOCPT as required in the Land Policy Guidelines 2014. The VOCPT to furnish the reasons in writing as required by the Land Policy Guidelines, 2014. The VOCPT to also clarify how the proposed lease rent correlates with the highest offer received for 30 years period.	Port has assessed the proposed lease rate to M/s.SPIC for Phosphoric Acid Tank based on increase of the highest tender rate received for tank form allotment during the year 2010 over value adopted in 2007. This is because the normal process of 6% return on highest market value could not be applied to the current case based on wharf area inside security wall. Considering the above fact, Land Allotment Committee recommended the above proposal of ₹3495/ sqm/ annum and 2% escalation for subsequent year from 19.01.2016 and approved by the Board. Hence, the question of correlation with highest offer received for 30 years period is considered not relevant.

9.2. The VOCPT has requested to consider the proposal for fixation of lease rent of ₹3495/ sqm/ annum and 2% escalation for subsequent years in respect of the land leased to SPIC Ltd. for the Phosphoric Acid Storage Tank at VOC Wharf for a further period of 5 years from 20.02.2011 to 19.01.2016 under Section 49 of MPT Act 1963.

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

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

- (i). The proposal of the V. O. Chidambaranar (VOCPT) is for revision of lease rent for two parcels of land viz. 2325 sq. mtrs and 1085 sq. mtrs which have been allotted by the port to M/s. Southern Petrochemical Industries Corporation Limited (SPIC) at VOC Wharf for installation of Phosphoric Acid Tank in VOC Wharf.

The two pieces of land were earlier allotted to SPIC for 30 years lease with effect from 1 April 1979 and 20 January 1981 respectively. Accordingly, the lease of one piece of land allotted to SPIC Ltd. in April 1979 had expired on 31 March 2009 and the lease for another piece of land allotted on 20 January 1981 had expired in 19 January 2011.

- (ii). The lease rent for the said land at VOC wharfs allotted by VOCPT to SPIC was last approved by this Authority vide Order No TAMP/13/2007 - TPT dated 7 August 2007. In the said Order, this Authority revised the lease rent at ₹ 2386 per sq.mtr. per annum as against then pre-revised lease rent of ₹ 708 per sq.mtr. per annum. The revised lease rent was given retrospective effect from 1 January 2007 and the validity of the rate was made coterminus with the expiry of the respective lease agreements entered between VOCPT and SPIC i.e. lease of one piece of land expiring on 31 March 2009 and another piece of land expiring in 19 January 2011.

- (iii). The port has reported that the lease period of the 1st allotment which expired on 31 March 2009, has been extended by the port with the approval of its Board from 01.04.2009 to 28.02.2010. Thereafter, with the approval of its Board, the port has reported to have renewed it on short term licence basis to a minimum period upto 19.01.2011 to coincide with the expiry date of lease period of second allotment. In the current proposal the port has sought approval of the revised lease rent for both the areas with retrospective effect from 20.1.2011 for period of five years.

It is seen that though the validity of the lease rent approved by this Authority expired on 1 April 2009 in respect of first allotment and 19 January 2011 in respect of second parcel of land allotted by VOCPT, the port has approached this Authority seeking approval of the revised lease rent only in July 2014. The port has clarified that it had approached the Ministry of Shipping (MOS) in May 2011 to accord approval for the renewal of the lease in respect of the above said two lands allotted to M/s.SPIC Ltd. and that the Ministry of Shipping (MOS) vide its letter dated 20 January 2014 has instructed the port to take renewal action of already expired long term allotments as per Land Policy Guidelines 2014.

Accordingly, the port has filed the current proposal. The original proposal filed by VOCPT in July 2014 was not complete in all respects which was pointed out to the port. It was only on 23 December 2014, the VOCPT filed the proposal complete in all respects. After protracted follow up, the information/ clarification sought by us was furnished by VOCPT vide its letter dated 18 September 2015. The VOCPT has furnished its comments on the comments of SPIC only on 24 February 2016. Thereafter, the proposal of the VOCPT along with the information furnished by the port during the processing of the case is taken up for finalisation.

- (iv). Before proceeding ahead with the analysis of this case it is relevant here to state that the SPIC has filed Writ Petition Nos.5199 / 2015 and 5200 / 2015 in the Hon'ble High Court of Madras at its Madurai Bench challenging the lease rent revised by this Authority retrospectively vide Order No.TAMP/6/2012-VOCPT dated 4 April 2014 in respect of port lands.

To a query raised in this regard, the port has clarified that revision of lease rent sought is with reference to the land allotted to SPIC Ltd. for phosphoric acid tank for the area inside the Green gate area whereas the WP Nos.5199 of 2015 and 5200 of 2015 filed by SPIC is with reference to the revised lease rent of port lands approved by this Authority in respect of Ammonia Storage tank which is located outside Green Gate and in respect of land allotted to Railways siding leading to SPIC factory respectively.

The port has reported that SPIC has filed another Miscellaneous Petition No.2 of 2015 in WP (MD) No.2918 of 2015 seeking relief of restraining the Port Trust from interfering with peaceful possession of land allotted to SPIC by the Port Trust for storage of Phosphoric Acid tank. The port has confirmed that the Writ Petitions filed by SPIC which are pending for disposal in the Hon'ble High Courts do not have any bearing on the current proposal of VOCPT seeking revision of lease rent and pending litigation in no way restrains the Port from taking renewal action as per Land Policy Guidelines 2014. The area for which revision is sought by VOCPT is different from the lease rent for port lands approved in April 2014 Order which is challenged by SPIC. Hence, the proposal of the VOCPT is taken up for final conclusion.

- (v). Fixation of lease rent for port lands, is governed by the Land Policy Guidelines issued by the Government from time to time. The VOCPT had filed the proposal under the Land Policy Guidelines of 2014. Para 18(a) of the Land Policy Guidelines of 2014 stipulates that the Land Allotment Committee (LAC) to be appointed by the Port Trust should normally take into account highest of the five factors listed in the guidelines to determine the market value of the land. The five factors to be considered by the LAC for market valuation of land are already brought out in the initial paragraphs of the Order and hence not reiterated for the sake of brevity. Para 18 (a) of the Land Policy Guidelines 2014 also stipulates that if the highest of the five factors is not adopted then reasons for the same are to be recorded in the writing.

When the proposal was already processed and the entire consultation process and joint hearing was over, the Ministry of Shipping (MOS) in October 2015 has forwarded revised Land Policy Guidelines 2014, which was issued by the MOS to all the Major Port Trusts in July 2015 as understood from the proposal of V.O. Chidambaranar Port Trust (VOCPT). In the revised Land Policy Guidelines 2014, the methodology for determination of market value of the land based on the five factors as prescribed in the Land Policy Guidelines of 2014 is retained. The revised guidelines of the 2014 prescribes the same condition that in no case the lease rent will be less than 6% of the latest market value recommended by the Port Trust and the rate of annual escalation in the lease rental to be fixed by the Port Trust Board will also not be less than 2% as in the Land Policy Guidelines, 2014. The revised Land Policy Guidelines 2014 states that this Authority will notify the latest Scale of Rates (SoR) instead of notification of market value of land stipulated in the earlier Land Policy Guidelines 2014. Further, it also stipulates that the SoR will be revised every five years.

Thus, in short the broad principles for determination of latest Scale of Rates for port lands in the Land Policy Guidelines of 2014 are retained in the Revised Land policy guidelines of 2014 except for the main modifications explained above. Hence, this analysis proceeds ahead to fix lease rent for the land at VOCPT wharf allotted by VOCPT to SPIC based on the proposal filed by the VOCPT and

following the revised Land Policy Guidelines of 2014 issued in July 2015 which is broadly same as the Land Policy Guidelines of 2014 issued in January 2014.

- (vi). As per clause 11.2(e) of the revised Land Policy Guidelines 2014, a Land Allotment Committee (LAC) shall be constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic. It is seen from the minutes of the Land Allotment Committee (LAC) forwarded by VOCPT that Port has constituted the LAC under the Chairmanship of Deputy Chairman VOCPT and comprising of other members viz. Chief Engineer, Deputy Traffic Manager, Deputy Financial Advisor and Chief Accounts Officer.

The LAC in its meeting held on 21 February 2014 has recommended the lease rent of ₹3495/- per sq. mtr./ annum with retrospective effect from 20 January 2011 for a period of 5 years i.e. upto 19 January 2016. The LAC has also recommended 2% annual escalation in the lease rent.

- (vii). (a). As per Clause 13(a) of the revised land policy guidelines of 2014, the LAC shall determine the market value of land taking into account highest of the five factors.

As per clause 13 (c) read with clause 13(a) and (b) of the revised land policy guidelines of 2014, the port shall file a proposal to TAMP for fixation of latest SOR of the land at the rate not less than 6% to be decided by the Port Trust based on the market value of land recommended by the LAC which will normally take into account the highest of the five factors for market value of land stipulated in Para 13 (a) of revised land policy guidelines of 2014. In case the LAC is not choosing the highest factor, the guidelines requires the reasons for the same have to be recorded in writing.

- (b). For arriving at the proposed lease rent, the VOCPT has applied 46.48% increase on the lease rent of ₹2386/- Sq. Mtr./ annum, approved by this Authority in the last Order 7 August 2007. This percentage increase of 46.48% is arrived by VOCPT by comparing the competitive bid received for land outside the wharf area during the last revision in the year 2007 i.e. ₹3505/- Sq. Mtr. vis-à-vis the highest offer received in the year 2010 ₹5134/- Sq. for land outside the wharf area (i.e. $5134-3505 / 3505 = 46.48\%$).

The approach followed by VOCPT is not found to be exactly in line with the clause 13(a) of the Land Policy Guidelines 2014 which stipulates that lease rent is to be arrived applying a minimum of 6% return on the highest market land value recommended by the LAC based on the five factors prescribed in the guidelines. On seeking clarification from port in this regard and also with a request to furnish the market value of land assessed under all the options along with recommendations of LAC in line with the provisions prescribed in the Land Policy Guidelines of 2014, the VOCPT has clarified that as the land has been leased to SPIC Ltd. for storage of Phosphoric Acid Tanks which is in the Wharf Area (Operational area), it is not possible to assess the market value of land based on each of the five methods prescribed in the Land Policy Guidelines of 2014.

The VOCPT has clarified that the valuation of the said land is as per the one of methods prescribed in clause 13(a) of the revised Land Policy Guidelines 2014 at sr. no (iii) i.e. Highest accepted tender rate of Port land for similar transactions, updated on the basis of annual escalation of 2% as per Land Policy Guidelines.

Port has reiterated that during 2010 the reserve price fixed by the Port for calling tender outside the Wharf area was ₹3,505/sqm/ annum. The

competitive price bid (Highest offer) received by the Port for the area outside wharf during the year 2010 was ₹5,134/sqm/ for 30 year. The percentage increase of competitive offer over reserve price comes to 46.48%. Considering the percentage increase of 46.48% over the lease rent of ₹2,386 per sq. mtr./ annum prevailing as on 19 January 2011, the proposed rate of ₹3,495/sqm/annum is arrived (i.e. 2386×1.4648). Thus, in short port has proposed lease rate based on increase in the highest tender rate received by the port for the area outside the wharf area during the year 2010 over tender value adopted in 2007 which was considered in the last revision order. During the last revision the port has stated that the value of land inside the wharf area, which is the prime location of the operational area of the port, will undoubtedly be more than the value of land outside the wharf area. Even during the current proceeding of the case the port has reiterated that the wharf area is a prime area.

As per Land Policy Guidelines, the lease rent is to be arrived by applying 6% return on the highest market value of land. In the instant case, the port has clarified that the normal process of arriving at lease rent at 6% return on highest market value could not be applied since the subject wharf area is inside security wall. It is relevant to state here that even during the last revision the port had adopted the same methodology for arriving at the lease rent for land allotted to SPIC which was approved by this Authority in August 2007 Order.

During the last revision, this Authority has held that, as pointed by the VOCPT, since the concerned piece of land is located right inside the operational area, it might have posed problem for the port to assess the market value of the subject land on the five factors prescribed in the Land Policy Guidelines. As stated earlier, the port has, therefore, considered the highest accepted tender of port land for similar transaction outside the wharf area as the factor for determining the lease rental of land allotted to SPIC in line with the Government guidelines. The lease rent proposed by the port in the current exercise is on the same methodology as followed by the port during the last revision and approved by this Authority in August 2007.

In view of the submissions made by the VOCPT and recognising that the proposal filed by the VOCPT is based on the recommendation of the LAC headed by Deputy Chairman (VOCPT) and comprising of Head of the Departments of the port trust has, and also recognising that the Board of Trustees of VOCPT has approved the proposed lease rent filed by VOCPT under the land policy guidelines 2014, and also recognising that the lease rent arrived by the VOCPT is based on the methodology followed by the port during the last revision for the same land which was approved by this Authority as proposed by the port, this Authority decides to go with the proposal of the port and approves the lease rent as proposed by the port.

- (c). The SPIC has objected the proposed lease rent. It has stated that the valuation process adopted by VOCPT on the basis of the "highest accepted tender of port lands leased for 30 years on upfront premium", has resulted in the highest rate of increase. The SPIC has argued that for the past 5 years from 2011 to 2015, it has already paid 10% on account of annual escalation. The SPIC has, therefore, requested this Authority to reject the present proposal of revision in lease rent at its entirety or allow moderate increase of 5% instead of 46.48% increase proposed by VOCPT.

As reported by the VOCPT the lease agreement entered by the port with SPIC for the two allotments in the years 1979 and 1982 provided for

upward revision in the rate once in every five years. As per clause 13(c) of revised Land Policy Guidelines 2014 issued by the Ministry of Shipping in the Government of India, the lease rent is to be revised every five years. This provision for revision in lease rent every five years is also stipulated in the earlier Land Policy Guidelines of 2010 and 2004 issued by the Government of India. As stated earlier, the lease rent approved by this Authority in August 2007 is already due for revision from the date of expiry i.e. 31 March 2009 and 19 January 2011. This Authority is mandated by the statute to revise the rates from time to time for the properties belonging to the Major Port Trust. Hence, this Authority is not able to accept the contention of the SPIC to reject the proposal of VOCPT. Since the proposed lease rent is based on the recommendation of the LAC and also approved by its Board and the proposal is in line with the approach followed by the port in the last revision, this Authority is inclined to approve the same.

The SPIC, while suggesting to consider 5% increase in lease rent, has not explained any basis thereof. It cannot be denied that port wharf area is a scarce resource. During the last revision, the VOCPT had generally, stated that such lands in operational area are assigned on common user basis for storing cargo for which storage / demurrage charge are collected at the rate prescribed in the Scale of Rates. The SPIC, however, enjoys exclusive right to store its cargo. It had also stated that it cannot be denied that the value of land inside the wharf area is bound to be higher than outside the wharf area as port wharf is a scarce resource. The same point stands valid even now.

One of the points made by SPIC is that though they had submitted their objections during the processing of the August 2007 Order, they were not given due consideration is not correct. In this context, it is to state that this Authority had passed a reasoned speaking Order taking into consideration the objections raised by SPIC during processing of the last revision of lease rent for the lands allotted to SPIC.

The SPIC has stated that from the year 2011 onwards, it has paid 2% annual escalation and that for the past 5 years from 2011 to 2015, it has already paid 10% on account of annual escalation.

In this regard it is to clarify that this Authority in the last tariff Order has not prescribed any annual escalation in the lease rent for land allotted to SPIC whose validity already expired in January 2011. This Authority in para 8(vii) of the Order dated 7 January 2007 has observed that the lease agreement entered by the (then) Tuticorin Port Trust with SPIC does not provide for automatic annual revision in the lease rental which is normally prescribed in the other leases. The annual escalation referred by the SPIC appears to be for the period beyond the validity of the lease rent for which port has not earlier approached this Authority as such.

- (viii). SPIC has also objected to the retrospective revision in the rates. They have pointed out that the revised rate should have prospective effect only from the date of actual approval of the rates.

Significantly, Section 49 of the Major Port Trusts Act, 1963 calls for fixation of rates from time to time. Ordinarily, the Scale of Rates approved by this Authority is given prospective effect. It is, however, relevant to mention here that for fixation of lease rent, this Authority is bound by the Land Policy guidelines issued by the Government for arriving at the lease rental for Major Port Trusts land, which mandates revision of rates once in five years.

As per clause 13(c) of revised Land Policy Guidelines 2014 issued by the Ministry of Shipping in the Government of India, the lease rent is to be revised every five years. This provision for revision in lease rent every five years was also stipulated in the earlier Land Policy Guidelines of 2010 and 2004 issued by the Ministry of Shipping. As stated earlier, the validity of the lease rent last revised by this Authority in August 2007 Order which was given retrospective effect from 1 January 2007 expired on 31 March 2009 in respect of 2325 sq. mtrs of land and for another piece of land admeasuring 1085 sq. mtrs., the validity of lease rent approved by this Authority expired on 19 January 2011. This position is also admitted by VOCPT. Hence lease rent is due for revision from 1 April 2009 and 20 January 2011 respectively for the two parcels of land.

The position that the lease rentals for the lands of VOCPT will be reviewed after expiry of five years is in the knowledge of the SPIC also. The port has stated that with the approval of its Board, it has extended the lease period for the first lease agreement from 01.04.2009 to 28.02.2010 and thereafter, with the approval of its Board, the port has reported to have renewed it on short term licence basis to a minimum period upto 19.01.2011 to coincide with the expiry date of licence period of second allotment and has requested for revised lease rent retrospectively from 20 January 2011. In view of the clear Government guidelines in this regard and recognising that lease rent for both pieces of land have already expired, it is necessary to consider revision of lease rents at VOCPT retrospectively even though this Authority does not ordinarily resort to retrospective fixation of rates. This Authority approves the proposal of the VOCPT for revision in lease rent for both the areas of land inside the wharf area with retrospective effect from 20 January 2011 for a further period of 5 years i.e. upto 19 January 2016 .

In fact, it is relevant to mention here that this approach is being followed not only in the instant case of the VOCPT but also in the other Major Port Trusts including the lease rent of VOCPT land approved by this Authority vide Order dated 4 April 2014. With reference to the April 2014 Order, though the petitioners including SPIC have challenged retrospective revision and obtained interim stay, the final decision is pending for disposal by the Hon'ble Court. In the case of the Visakhapatnam Port Trust, the lease rent approved by this Authority vide Order No.TAMP/37/2009-VPT dated 29 November 2009 for the two quinquennium 1998-2003 and 2003-2008 was given retrospective effect from 1 April 1998 and 1 April 2003 for the two quinquennium respectively as proposed by the VPT following the applicable land policy guidelines. Subsequent revision in the lease rent of the VPT lands approved vide Order No.TAMP/63/2011-VPT dated 19 June 2012 was also given retrospective effect from 1 April 2008 as proposed by the VPT.

The lease rental approved in the case of New Mangalore Port Trust vide Order No.TAMP/15/2007-NMPT dated 16 June 2010 was also given retrospective effect from 20 February 2007. It is relevant here to mention that the said Order of the NMPT was challenged by some users/ lessees in the Hon'ble High Court of Karnataka mainly in view of retrospective effect given by this Authority. The Hon'ble High Court vide their judgment dated 28 June 2013 has dismissed all the Writ Petitions filed by the users/lessees in this matter and has upheld the Order of this Authority for retrospective revision and has also upheld the demand made by the NMPT based on the Order of this Authority for revised lease rentals with retrospective effect.

- (ix). The port has stated that as per clause 11.3 (c) of the revised Land Policy Guidelines, 2014 renewal of existing leases shall be done through tender cum auction process. The port has reported that its Board has extended the lease for the land allotted to SPIC until finalization of tender and that renewal of the said

two parcels of land from 20 January 2011 till finalization of tender is to be regularised by fixing lease rent from 20 January 2011 for five years period. In this context it is to clarify that the mandate of this Authority is limited to fixation of lease rent for port properties. Allotment of land and renewal of lease falls under the domain of the concerned Port Trust.

- (x). The VOCPT has stated that earlier the practice of 2% annual escalation was not prevailing. It has now proposed annual escalation of 2% for the subject areas which is based on the recommendation of the LAC and has the approval of the Board of Trustees of the VOCPT. As per clause 13 (c) of the revised Land Policy Guidelines, 2014 the annual escalation in the lease rent should not be less than 2%. Since the annual escalation proposed by the VOCPT at 2% is based on the recommendation of the LAC and has the approval of the Board of Trustees of the VOCPT, the same is approved as it is well within the frame work of the revised Land Policy Guidelines, 2014.
- (xi). The VOCPT has not proposed any conditionalities governing the lease rent proposed for phosphoric acid storage tank allowed to SPIC limited. On being pointed out, the port has clarified that the conditionalities generally applicable as per the Land Policy Guidelines are recognised in the respective lease agreement and hence separate conditionalities are not required to be prescribed.
- (xii). The lease period for both the pieces of land allotted has expired on 19 January 2011. The VOCPT has extended the allotment of land made to SPIC until finalization of tender. Therefore, port has requested to approve the revised lease rental in the name of SPIC. Based on the clarification of VOCPT, this Authority approves the lease rent in the name of SPIC as proposed by port.

12. In the result, and for the reasons give above, and based on a collective application of mind, this Authority approves the proposed lease rent of ₹ 3495 per sq. mtr. per annum proposed with retrospective effect from 20 January 2011 for land at VOC wharfs areas measuring 2325 sq. mtrs and 1085 sq. mtrs for storage of phosphoric acid reported to have been allotted to SPIC. The revised lease rent will be valid for five years i.e. upto 19 January 2016. The lease approved by this Authority are subject to annual escalation of 2% per annum from 20 January 2012 till the validity of the lease rent as proposed by the VOCPT.

(T.S. Balasubramanian)
Member (Finance)

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

TAMP/38/2014-VOCPT	:	Proposal received from the V.O. Chidambaranar Port Trust (VOCPT) for revision of lease rent of the land leased out to M/s. Southern Petrochemical Industries Corporation Limited at VOC Wharf for installation of phosphoric acid storage tanks.
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The summary of the comments received from the SPIC Ltd. and reply furnished by VOCPT thereon are summarised below:

Sl. No.	Comments of SPIC Ltd.	VOCPT
(i).	When the Government of Tamil Nadu ("GOT") wanted the Government of India ("GOI") to invest and develop a Major Port at Tuticorin during the mid-1960s, it needed anchor industries to improve the commercial viability, since this District was most backward in industrial development at that point of time. Hence, GOT through Tamil Nadu Industrial Development Corporation Ltd., (TIDCO) invited our promoters, viz. Dr M.A. Chidambaram group to invest in one of the largest integrated fertilizer complexes of Asia in Tuticorin. Based on the assurance given by the Port Authorities to provide infrastructure facilities in the Port premises for importing and storing raw materials which are required for the manufacture of fertilizers, the promoters had installed the renowned fertilizer complex of SPIC, for production of Urea, Di Ammonium Phosphate and other allied fertilizers. Thus, SPIC had made substantial investment of over ₹4,000 crores, at present day cost, in the manufacturing facilities and Port related infrastructures.	Not relevant
(ii).	SPIC had entered into various lease agreements and developed the Tank Farms and other inter-related infrastructures on huge investment and generated substantial revenue to the Port Trust. For the purpose of manufacturing activities, SPIC required land for installing tanks for storage of Ammonia, Phosphoric Acid for installation of BG Railway Siding. The production process is continuous and required an uninterrupted supply of raw materials. Therefore the location of the plant was chosen taking in to account the port facilities at Tuticorin.	Not relevant
(iii).	SPIC took up Port Trust lands on lease for a period of 30 years. The revision in lease rent is made every five years keeping in line with the provisions of the Principal Agreement and the procedure set out under the existing Land Policy for Major Ports. The very purpose of the policy is to ensure that the rates are not unreasonably increased, so that the goods that become available in the country through Ports do not have to bear a disproportionately high cost burden. This regulation in pricing is principally for the reason that, the number of participants and players in Port related activities as well as the number of Ports are not large, resulting in disproportionate concentration and monopolistic tendencies that has the potential to cause unreasonable increase in rates. The principal guidelines in this regard is that, prices have to be fixed in a manner that would ensure reasonable rate of return and at the same time would be in public interest and not result in escalation of price due to policies in that regard.	Not relevant
(iv).	The fertilizer industry operates in a highly regulated environment. Hence, unreasonable increase in lease rent will	Not relevant

	lead to immediate losses and ultimate closure of SPIC which will be against public interest and will also lead to huge unemployment. Also, the non-availability of fertilizers will affect the livelihood of millions of South Indian farmers. Considering the nature of industry, SPIC is a special case and should not be treated at par with other Port users.	
(v).	The initial lease rent was ₹264/- (Per Sqm/Annum). In 1987, the lease rent was revised to ₹370 (Per Sqm/Annum) i.e., the increase of 40%. In 1992, the lease rent was again increased to ₹444/- (Per Sqm/Annum) with 20% increase. In 1997, the lease rent was increased to ₹555/- (Per Sqm/Annum) with an increase of 25%. In 2002, the lease rent was again increased to ₹708/- with an increase of 28% and in 2007, increased to ₹2386/- with an exorbitant increase of 237%. Though, we have submitted our objections vide letter dated 12 April 2007, these were not given due consideration. Since SPIC depends on the facility and without which, the manufacturing activity could not be continued, SPIC was forced to accept the said steep increase in rent, under protest, without any alternative. The lease rents must be fixed keeping in mind with the nature of industry and its contribution to the society at large. Frequent increase of rent for every block of 5 years itself too steep considering the various factors which have impact on the fertilizer industry. Moreover, the increase in the rent cannot be passed on the Government controlled fertilizer price. Such an increase, as sought for, would make projects entirely unviable. Hence, the present proposal of VOCPT for revision of lease rent is not acceptable to us.	The revision proposed is as per the Land Policy Guidelines (LPG) of 2014 and hence the request of M/s. SPIC cannot be considered.
(vi).	The valuation process adopted by VOCPT and the valuation arrived at on the basis of the "highest accepted tender of port lands leased for 30 years on upfront premium", has resulted in the highest rate of increase. As mentioned earlier, the lease rent was already revised in excess during the earlier periods. Hence, we request the TAMP authorities to reject the present proposal of revision in lease rent at its entirety or at any rate with moderate revision to 5% increase from the present lease rent.	Cannot be considered as the fixation is based on the Land Policy Guidelines (LPG) 2014 and the current rate proposed is by adopting the percentage of increase of lease rent over the period in question and by applying the approved rates prevalent in 2007.
(vii).	Further the Enhancement of rent ought to be prospective and not retrospective for the following reasons:	The Lease Agreement with M/s. SPIC expired on 19.01.2011. As per the new Land Policy Guidelines (LPG) of 2014, the allotment of land or renewal of the existing allotment shall be done only through tender cum auction method which has also been followed for M/s. SPIC for their Phosphoric Acid storage tanks. Hence, renewal of the above said land from 20.01.2011 till finalization of the tender has to be regularized by fixing the lease rent for the above period. So, while the renewal of allotment is made with effect from 2011, the lease rent for the same should also be applied in accordance with that after approval.
	(a). TAMP, which has been constituted under the Major Port Trust Act, is bound by the powers granted under the Act and even though power is given under Section 49 of the Act to fix the scale of rates, no power is granted to TAMP to retrospectively fix a scale of rates for leasing of land and any such fixation of rent is beyond the powers of TAMP.	
	(b). In addition to the above, there is no provision in the lease agreement for retrospective revision of rent. As per the lease agreement, the upward revision is not automatic and optional for the Lessor. Such enhancement would arise only if the option is exercised by the Lessor and with effect from the date on which such option is exercised. If the Lessor does not exercise the option to enhance the lease rent, the same cannot be done subsequently with retrospective effect.	
	(c). The increase in rent for the expired periods cannot be passed through to the customers as our books of accounts have been closed based on the then prevailing rates. Therefore, retrospectively applying the revision in lease rents can be neither passed on the customer nor realised from the GOI in the form of subsidy. Hence, any retrospective increase in rent would gravely affect the interest of SPIC, as the entire additional costs will need to be borne by SPIC alone.	
(viii).	Government agencies such as the VOCPT shall not function as	Not relevant

	a private landlord, obtaining high lease rentals and increased revenue from land by entirely ignoring the fact that the Government owned Port Trust is required to make best use of its resources to facilitate generation of income. Hence, State enterprise such as the Port Trust, which has a permanent sovereignty over natural resources, owes a duty to utilize them in a manner which is beneficial to the public at large, rather than seeking to merely maximize the revenue to its exchequer.	
(ix).	SPIC is even though a commercial entity is a lot different from other users of the Port because of the fact, that they support and supply the most essential fertilizers to the vast farming community who are the backbone of Indian economy. Moreover, the fertilizer products are not sold in open market price like other port users products, but sold in a much lesser regulated price determined and monitored by Government of India. Hence, any adverse impact in the operational cost due to the increase in rent will either result in a great loss to the company or increase in subsidy which is a national burden.	No comments since not relevant
(x).	Further various factors are required to be taken into account, depending upon the type of land and its end use. The Land Use Policy does not mandate a single method to be applied for all lands as has been sought to be done in the instant case. This is based on the fundamental rationale that the land itself is to be viewed as one that can be leveraged for increasing throughput and revenue there-from and, as such, the particular use of a land becomes important and the Land Use Policy also mandates fixing of rates in accordance with the specific objective of ensuring that an industrial undertaking or a service is not charged with lease rents that are determined merely by the value of land as in the instant case.	The land used by M/s. SPIC is in the prime area of the wharf.
(xi).	The basis of enhancement is also not in accordance with the conditions contained in the lease agreement and is contrary to the terms under the agreement. We request TAMP, which is a quasi-judicial authority for determining the reasonableness of the rate increase proposal and appropriateness of valuation method, to favourably consider our above mentioned comments. We will be thankful for your rejecting the VOCPT proposal and moderating the increase in rent to 5%.	The basis of enhancement is as per Land Policy Guidelines 2014. Moreover, the lease agreement has already expired on 19.01.2011 as stated above.

2. A joint hearing in this case was held on 26 June 2015 at the VOCPT premises in Tuticorin. The VOCPT made a power point presentation of its proposal. At the joint hearing, the VOCPT and the SPIC have made the following submissions:

V.O. Chidambaranar Port Trust (VOCPT)

- (i). Port land was allotted to SPIC for installation of Phosphoric Acid Tank in VOC Wharf on long term lease basis for 30 years. The lease for Ist allotment of 2325 sqm was effective from 01.04.1979 and IInd allotment of 1085 sqm was effective from 20.01.1982.
- (ii). The lease for the first allotment expired on 31.03.2009 and the second allotment expired on 19.01.2011.
- (iii). Lease rent for the land allotted for installation of Phosphoric acid storage tank was last fixed by TAMP at ₹2,386/Sq.m/ annum w.e.f. 01.01.2007. The rate approved was made co-terminus with the expiry of respective lease agreements.
- (iv). Approval of Ministry was sought for further renewal of lease for 30 years w.e.f. 20.01.2011. Ministry has, however, instructed the Port to take action for renewal of already expired long term allotments as per Land Policy Guidelines 2014.

- (v). During 2010 the reserve price fixed by the Port for calling tender outside the Wharf area was ₹3,505/sqm/ for 30 years period. The competitive price bid (Highest offer) received by the Port for the area outside wharf during the year 2010 was ₹5,134/sqm/ for 30 year. The percentage increase of competitive offer over reserve price comes to 46.48%. Considering the percentage of 46.48% over the lease rent prevailing as on 19.1.2011, the proposed rate of ₹ 3,495/sqm/annum is arrived at.
- (vi). TAMP is requested to approve lease rent of ₹ 3,495/Sq.m/Annum with 2% escalation every year for a period of 5 years from 20.01.2011 to 19.01.2016 or upto the period till the tender process is complete, whichever is earlier.
- (vii). Minimum Guarantee Throughput (MGT) for SPIC is 90,000/- tonnes per annum. SPIC has handled around 60,000/- tonnes which is lower than the MGT. SPIC should increase the traffic to the best possible level.

[SPIC: We could not achieve the MGT due to some constraints. We will definitely thrive to increase the traffic.]

Southern Petrochemical Industries Corporation (SPIC)

- (i). In the year 2007 the least rent was increased by 237% by TAMP. The increase allowed by TAMP was accepted by us under protest.
- (ii). The average increase in the past has been in the range of 20% to 25%.
- (iii). We are already paying 2% annual escalation from the year 2011. This practice of 2% annual escalation was not prevailing earlier.
- (iv). For the past 5 years from 2011 to 2015, we have already paid 10% on account of annual escalation. Hence moderate increase of 5% is considered instead of 46.48% increase proposed by VOCPT.
