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TARIFF AUTHORITY FOR MAJOR PORTS

G No. 350 **New Delhi,** **4 December 2014**

NOTIFICATION

In exercise of the powers conferred under Section 49 of the Major Port Trust Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal of Kandla Port Trust for revision of rate structure of Kandla land of Kandla Port Trust as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/24/2014-KPT

Kandla Port Trust **- - -** **Applicant**

QUORUM:

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. C.B. Singh, Member (Economic)

O R D E R
(Passed on this 13th day of November 2014)

This case relates to the proposal received from Kandla Port Trust for revision of rate structure of Kandla lands at Kandla for categories 'A to G' for the period from 1 January 2014 to 31 December 2018.

2.1. The lease rents for Kandla lands (categories A to G) of Kandla Port Trust (KPT) were last revised vide Order no.TAMP/21/2010-KPT dated 25 March 2011.

2.2. In the said Order, the lease rents for Kandla lands were approved for three quinquenniums viz. July 1999 to 31 December 2003, 1 January 2004 to 31 December 2008 and for the period 1 January 2009 till 31 December 2013. The revised lease rentals approved in the said Order were given retrospective effect. The validity of lease rent of Kandla lands was prescribed till 31 December 2013.

3.1. Before proceeding ahead on the current proposal filed by the KPT, it is relevant here to mention that some parties have filed Writ Petitions before the Hon'ble High Court of Gujarat mainly challenging the retrospective revision in the lease rents approved by this Authority vide its Order dated 25 March 2011. The Hon'ble High Court has, however, not stayed implementation of the said Order dated 25 March 2011.

3.2. In the meanwhile, the KPT by its letter dated 27 December 2013 had sought extension of the validity of the lease rentals of Kandla land from the date of its expiry i.e. 31 December 2013 upto 30 June 2014 on the ground that its proposal for revision of rates for Kandla land is under consideration and it will take some time for filing the proposal.

3.3. This Authority has passed an Order on 4 July 2014 extending the validity of the existing lease rentals of the Kandla lands from the date of its expiry till 30 September 2014. It is stipulated in the said Order that the lease rentals to be fixed by this Authority for the KPT lands based on the proposal filed by the KPT will have retrospective effect from 1 January 2014 as proposed by KPT. The extension of validity of SOR granted is subject to the decision of the Hon'ble High Court of Gujarat in the Writ Petitions filed by the Petitioners challenging this Authority's Order dated 25 March 2011.

4. The KPT vide its letter dated 26 June 2014 has filed its comprehensive proposal for revision of rates for Kandla land for categories 'A' to 'F' and 'G'. The main points of the proposal of KPT are summarised below:

(i). The Land Policy Guidelines 2014, issued by the MOS have been adopted by the Kandla Port Trust on 23 January 2014.

(ii). As mandated, a Land Valuation Committee (LVC) was appointed for undertaking revision of rate structure of Kandla land from January 2014 to December 2018. The minutes of the meeting of LVC forwarded by KPT states that the said committee was headed by Dy. Chairman as Chairman of the Committee and Secretary, Chief Engineer and Traffic Manager, among the other members of the LVC.

(iii). (a). As per the direction of the LVC, a Government approved valuer was engaged by KPT in February 2014. The port has forwarded a copy of the Land valuation report submitted by the approved valuer appointed by the KPT

(b). As per valuation report, the land valuer has recommended the land values for each categories of land under the following options:

- land without reclamation and with infrastructure
- land with reclamation and with infrastructure; and
- as and where basis

(iv). The LVC in its meeting held on 23 April 2014 decided to recommend the lease rent based on valuation of land given by the Land Valuer on “As and where basis” for all categories of land except for categories A, D1, D2, D3, E and G. In respect of these 6 categories of land, the LVC has recommended valuation of land on the following basis:

(a). Category A:
As regards Category A, the valuer has valued the land on “As and where basis” at ₹2060/- per sq. mtr. As against that, the KPT has considered the value of land at ₹3942/- per sq. mtr. based on the recommendation of LVC. The KPT has stated that the market value of land for category A during the last revision was more than category B1. In the current exercise, the land value for category ‘A’ arrived by the valuer is, however, less than valuation of land for category ‘B1’. In view of that the rates for category A has been derived by considering any other factor as provided in Clause 18(a) (v) of Land Policy Guidelines, 2014. Accordingly, the rate for category A is worked out proportionately to category B1. (Land value in 2009 for Category ‘A’ X Land value of B1 Category as per Valuer in 2014 / Land value of Category B1 in 2009). i.e. 1840 X 3192 / 1490 = ₹3942 per sq. mtr. instead of ₹2060 per sq. mtr. recommended by the Land valuer.

(b). Sub-categories of land of D1, D2, D3 under the main category of land D:
The lease rents for sub-categories of land under the category D1, D2 and D3 are recommended based on the highest value of land received during recent auction at ₹3298/- per sq. mtr., ₹2153/- per sq. mtr., ₹3089/- per sq. mtr. respectively as against land value assessed by the valuer at ₹2131/- per sq. mtr., ₹1920/- per sq.mtr. and ₹2131/- per sq. mtr. in the valuation report for corresponding categories of land under the option of “As and where basis”.

(c). Category E:
For this category, the land value given by the valuer for “Land with Reclamation and with Infrastructure” has been considered at ₹5836/- per sq. mtr. instead of value of land assessed on “As and where basis” considered for categories B, C and F.

(d). Category G:
In respect of Category G1 the value of land has been arrived at by considering the highest rate received during auction of 2011 with 2% escalation every year. In respect of Category G-2 the value has been arrived at by weighted average method with reference to rate for G1 (Rate for G1xRate arrived at by Valuer for G2/ Rate arrived at by Valuer for G1 Category).

To elaborate, the LVC in its meeting dated 10 March 2014 [copy of the minutes of the meeting attached with earlier KPT letter dated 21 April 2014 has considered the valuation of land under the following five options and recommended the value of land for ‘G1’ category based on highest accepted tender in 2011 duly escalated by 2% per annum till 2014. The valuation of land for ‘G2’ category given by the valuer is proportionately updated upwards with reference to valuation of land recommended by LVC for ‘G1’ category. The relevant information in this regard is tabulated below:

Category G-1:

(i). Valuation of Land considered by LVC:

(a).	State Govt. Ready Recknor (No rate for Kandla Port Lands are available. These rate are of surrounding villages of Kidana, Mithirohar)	₹1050/- per sq. mtrs.
(b).	Highest rate of actual relevant transactions	No Transactions in last 3 years
(c).	Highest accepted tender-cum-auction rates for similar transactions	₹14,216/- per sq. mtrs. auction done in 2011 at location G-I
(d).	Rate arrived by approved valuer appointed by the Board for land without reclamation and with infrastructure.	₹12,375/-
(e).	Any other factors: The Board vide Resolution no. 74 dated 16 July 2013 approved weighted average rate of ₹10,523.18 per sq. mtrs. with 2% escalations every year and accordingly informed the Ministry/ Supreme Court	₹10,523/- per sq. mtrs.

(ii). Valuation of land recommended by LVC and the proposed lease rent @ 6% on market value of land in the current proposal is given below:

(a).	Highest rate received during auction in the year 2011 with 2% escalation per year (14216*1.02*1.02*1.02) = ₹15086.13 per sq. mtr.	₹15086.13
(b).	Lease Rental @ 6%	₹905.17 per sq. mtrs.

Category G-2:

(i). Valuation of Land considered by LVC:

(a).	State Govt. Ready Recknor (No rate for Kandla port lands are available. These rate are of surrounding villages of Kidana, Mithirohar)	₹1050/- per sq. mtrs.
(b).	Highest rate of actual relevant transactions	No Transactions in last 3 years
(c).	Highest accepted tender-cum-auction rates for similar transactions	Nil
(d).	Rate arrived by approved valuer appointed by the Board	₹8,170 /- (G-II category)
(e).	Any other factors: The Board vide Resolution no. 74 dated 16 July 2013 approved weighted average rate of ₹10,523.18 per sq. mtrs. with 2% escalations every years and accordingly informed the Ministry/Supreme Court	₹9959.89 per sq. mtr. (derived based on valuation of land recommended for G1) [i.e. 15086.13/ 12,375 * 8,170]

(ii). Valuation of land recommended by LVC and the proposed lease rent @ 6% on market value of land in the current proposal is given below:

(a).	Rate of G-I category / Rate arrived by valuer for G-I category X Rate arrived by valuer for G-2 category (₹15086.13 / ₹12375.00 X ₹8170)	₹9959.89
(b).	Lease rental at 6%	₹597.59 per sq. mtrs. per year

(v). To summarise, the valuation of land of various categories of Kandla Lands i.e. 'A to G' considered by LVC as seen from the copy of the minutes of the meeting dated 23 April 2014 forwarded by the KPT is reproduced below for ease of reference. The last column is inserted in the table given below indicating the value of land finally recommended by the LVC for arriving at lease rentals for Kandla lands.

(₹ per sq. mtrs.)

Category	**Description of Category**	**Lease Rentals approved by this Authority vide Order dated 25 March 2011 as on 1.1.2009**	**Market Value of Kandla Lands of Kandla Port Trust**						
			Jantri Rate (Gujarat Government)	**Transaction registered in last 3 years**	**Recent Auction Rates**	**Land Valuation received from valuer as on 01.01.2014 (in sq. mtrs.)**			**Market Value of Land on 1.1.2014 as recommended by Land Valuation Committee for arriving at lease rental**
		Lease Rentals per sq. mtrs. per annum as on 1.1.2009				Land Without Reclamation & with Infrastructure	Land With Reclamation & with Infrastructure	As and where basis of Land situated at Kandla	
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek	110.40	No Jantari Rate available for Kandla. However, the rate is ₹1050.00 m2 of nearby village for land used for commercial purpose	No transaction since last three years	--	2575.00	3350.00	2060.00	3942.00
B	**Land within half mile from the bank of the creek and having no water front**				--	--	--	--	
B1	Plots abutting on main road	89.40			--	3648.00	4560.00	3192.00	3192.00
B2	Plots situated on internal roads	80.40			--	3283.00	4140.00	2873.00	2873.00
C	**Land beyond half a mile from the bank of the creek**				--	--	--	--	
C1	Plots abutting on main road	80.40			--	2500.00	3520.00	1800.00	1800.00
C2	Other plots	64.80			--	2200.00	3000.00	1500.00	1500.00
D	**Land outside the bunder area and outside the west gate both on north as well as on the south of National Highway**				--	--	--	--	
D1	Plots directly abutting on NH-8A	100.20			₹3298.00 m2	D1-2368 m2	D1-3080 m2	D1-2131 m2	3298.00

Category	Description of Category	Lease Rentals approved by this Authority vide Order dated 25 March 2011 as on 1.1.2009	Market Value of Kandla Lands of Kandla Port Trust						
			Jantri Rate (Gujarat Government)	Transaction registered in last 3 years	Recent Auction Rates	Land Valuation received from valuer as on 01.01.2014 (in sq. mtrs.)			Market Value of Land on 1.1.2014 as recommended by Land Valuation Committee for arriving at lease rental
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	89.40			₹2153.00 m2	2131.00	2770.00	1920	2153.00
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	85.20			₹3089.00 m2	2368.00	3080.00	2131	3089.00
D4	Plots abutting to KK Road near zero point and railway crossing					2250.00	2925.00	2025	2025.00
D5	Valuation of land to the west gate of NH-8Atowards salt works of land without reclamation but with infrastructure					2850.00	3705.00	2565	2565.00
E	**Land within the docks**	180.60			--	5336.00	5836.00	3080.00	5836.00
F	**Land west of railway siding leading to Kandla Free Trade Zone and up to crossing of railway line**								
F1	Plots situated on SEZ side from Kandla Railway Station	100.20			--	3920.00	4900.00	3430.00	3430.00
F2	Plots situated on Ahmedabad side from Kandla Railway Station	94.80			--	7680.00	9600.00	6720.00	6720.00
G	**Land of Liquid Storage Tanks situated at old kandla between Railway siding and leading to M/s.IFFCO and M/s.IOCO (LPG)-(description in last tariff order)**	442.80			--	--	--	--	--
	Land of Liquid Storage Tanks (Description in the current proposal**)-**	**No such sub-categories in the last order.**							--
G1	Land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek		1050	No transaction since last three years	14216	12375.00	14850.00	11138.00	15086.13

Category	Description of Category	Lease Rentals approved by this Authority vide Order dated 25 March 2011 as on 1.1.2009	Market Value of Kandla Lands of Kandla Port Trust						
			Jantri Rate (Gujarat Government)	Transaction registered in last 3 years	Recent Auction Rates	Land Valuation received from valuer as on 01.01.2014 (in sq. mtrs.)			Market Value of Land on 1.1.2014 as recommended by Land Valuation Committee for arriving at lease rental
G2	Land from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.		1050	No transaction since last three years	---	8170.00	9804.00	7353.00	9959.89

(vi). Based on the recommendation of the LVC, the Board of Trustees of the KPT has approved the proposal for revision in the lease rentals of KPT lands- fixing reserve price or market value of land w.e.f. 1 January 2014 for categories A to G in its meeting held on 10 June 2014. Accordingly, the KPT has sought approval of market value/Reserve price in terms of the lease rent for KPT lands as tabulated below:

(₹ per sq. mtr.)

Sr. No.	Description of category	Lease Rent approved by this Authority vide Order No.TAMP/21/2010-KPT dated 25 March 2011 (As on 1.1.2009)		Market Value of land on 1.1.2014	Proposed Reserve price in terms of lease rent @ 6% of market value of land w.e.f. 1.1.2014
		Market Value of Land	Lease Rent approved		
A	**Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek**	1840.00	110.40	3942.00	236.52
B	**Land within half mile from the bank of the creek and having no water front**				
B1	Plots abutting on main road	1490.00	89.40	3192.00	191.52
B2	Plots situated on internal roads	1340.00	80.40	2873.00	172.38
C	**Land beyond half a mile from the bank of the creek**				
C1	Plots abutting on main road	1340.00	80.40	1800.00	108.00
C2	Other plots	1080.00	64.80	1500.00	90.00
D	**Land outside the bunder area and outside the west gate both on north as well as on the south of National Highway**				
D1	Plots directly abutting on NH-8A	1670.00	100.20	3298.00	197.88
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	1490.00	89.40	2153.00	129.18
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	1420.00	85.20	3089.00	185.34
D4	Plots abutting to KK road near zero point and railway crossing, 25 acres plots and other plots		--	2025.00	121.50
D5	Valuation of land to the West Gate of NH-8A towards salt works If land without reclamation but with infrastructure		--	2565.00	153.90
E	**Land within the docks**	3010.00	180.60	5836.00	350.16
F	**Land west of railway siding leading to Kandla Free Trade Zone and up to crossing of railway line**			**--**	
F1	Plots situated on SEZ side from Kandla Railway Station	1670.00	100.20	3430.00	205.80
F2	Plots situated on Ahmedabad side from Kandla Railway Station	1580.00	94.80	6720.00	403.20

Sr. No.	Description of category	Lease Rent approved by this Authority vide Order No.TAMP/21/2010-KPT dated 25 March 2011 (As on 1.1.2009)		Market Value of land on 1.1.2014	Proposed Reserve price in terms of lease rent @ 6% of market value of land w.e.f. 1.1.2014
		Market Value of Land	Lease Rent approved		
G	**Land of Liquid Storage Tanks**		442.80		
G1	Land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek			15086.13	905.17
G2	Land from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.			9959.89	597.59

5. In accordance with the consultation process prescribed, the proposal of the KPT dated 26 June 2014 was circulated to the concerned users/ user organisations seeking their comments. The comments received from the users / user organisations were forwarded to the KPT as feedback information. The KPT has furnished its remarks on the comments of users / user organizations vide its letters dated 19 August 2014 and 10 October 2014.

6. Based on the preliminary scrutiny of the proposal, the KPT was requested to furnish additional information/clarifications on a few points vide our letter dated 1 August 2014. Subsequent to the joint hearing, the KPT vide its e-mail dated 19 August 2014 has furnished its reply. A summary of queries raised by us and the response of the KPT is brought out in the subsequent paragraphs.

7.1. A joint hearing in this case was held on 4 August 2014 at the KPT premises. The KPT made a power point presentation of its proposal. At the joint hearing, KPT and the concerned users/ organisation bodies have made their submissions.

7.2. As decided at the joint hearing, the KPT was requested vide our letter dated 8 August 2014 to take action on the following points by 19 August 2014:

(i). Furnish comments on each of the written submissions made by Bharat Petroleum Corporation Ltd. (BPCL), Hindustan Petroleum Corporation Limited (HPCL), Gandhidham Chamber of Commerce & Industry (GCCI), Indian Farmers Fertiliser Cooperative Limited (IFFCO) and Kandla Port Karmachari Sangh (KPKS) at the joint hearing. A copy each of written submission of users furnished to the KPT.

(ii). During the joint hearing, some of the users/ lessees raised issues on the land valuation. Some them were –

(a). The BPCL has pointed out that they were categorised under C1 category. But, from January 2014, they have been shifted to G2 category though there is no change in physical parameters. The lease rent proposed for G2 category is around ₹600/ sq. mtr. per annum which is very steep and unreasonable.

(b). Valuation of land considered based on the recent transactions relate to transaction 20 kms. away from the port lands which is not be relevant.

(c). Considering land valuation for freehold land and applying it for leasehold land is not be appropriate.

(d). Adjoining private port which provides more facilities charges ₹36/ sq. mtr.

Clause 18(a) of the land policy guidelines stipulates that the Land Allotment Committee (LAC) will normally take into account the highest of the five factors prescribed in the Land Policy Guidelines of 2014 at clause 18 (a) to recommend the latest market value of land. In case the LAC does not choose the highest factor for recommending the land value, the said clause in the Land Policy Guidelines requires the reasons to be recorded in writing.

In view of the above objections and concerns raised by users/ lessees during joint hearing on the land valuation, the KPT was advised to relook at its proposal and revise, if necessary, following the provisions of the land policy guidelines of 2014 and file the same within two weeks' time, i.e. by 19 August 2014. The KPT was also advised to confirm that the valuation of land adopted for arriving at lease rental for each categories of land is realistic and representative.

(iii). Expedite furnishing response of KPT to our questionnaire dated 1 August 2014 in a two weeks' time i.e. by 19 August 2014.

8.1. With reference to point of action decided at the joint hearing brought out in para 7.2.(i) above, the KPT vide its letter dated Nil September 2014 has furnished its comments on the written submissions made by BPCL, HPCL, GCCI, IFFCO and KPKS. Subsequent to joint hearing, KPKS vide its letter dated 19 August 2014 has given further submissions.

8.2. With reference to point of action decided at the joint hearing as brought out in para 7.2. (ii) above, the KPT has not proposed any modification to its earlier proposal. The KPT has, however, furnished its comments on the issues raised by users. A summary of main issues raised by users and the reply of KPT vide its letters dated 19 August 2014 and dated 17 September 2014 is tabulated below:

Sl. No.	**Action points**	**Reply of KPT**
(a).	The BPCL has pointed out that they were categorised under C1 category. But, from January 2014, they have been shifted to G2 category though there is no change in physical parameters. The lease rent proposed for G2 category is around ₹600/ sq. mtr. per annum which is very steep and unreasonable.	As per Land Policy Guidelines 2014, the rates are to be fixed considering purpose also. So all leases, who have been allotted the land for 'Liquid Tanks' have been considered under G-I & G-2 categories irrespective of distance as earlier considered.
(b).	Valuation of land considered based on the recent transactions relate to transaction 20 kms. away from the port lands which is not relevant.	The transaction of 20 Kms away land is taken only to cross check the valuation derived from lease rent & to create an additional option to arrive at most suitable & justified valuation. However, valuation derived from lease rent has been considered as final.
(c).	Considering land valuation for freehold land and applying it for leasehold land is not appropriate.	It is clarified that since the valuation derived from lease rent, TAMP rate for inside dock area and rental agreements from various properties are higher & same has been adopted for final summary of valuation. Freehold valuation has not been considered as final.
(d).	Adjoining private port which provides more facilities charges ₹36/ sq. mtr.	The Kandla Port Trust has carried out the Rate revisions as per the provisions of the Land Policy Guidelines 2014 issued by the Ministry of Shipping, Govt. of India. Hence, the rates of private port shall not apply.

8.3. Subsequent to joint hearing, the comments were received from Shri Dusyant Arunkant Shah vide his letter dated 18 August 2014 and from Kandla Liquid Tank Terminal Association vide its letter dated 3 September 2014. The KPT has responded vide its letter dated 16 September 2014. The KPT has vide its letter dated 12 September 2014 furnished its comments on the comments of FCI which apparently seems to be received by the port directly from FCI. It is relevant to state here that we have not received any written comments from FCI nor have we forwarded the comments of FCI to KPT.

9.1. With regard to point of action brought about in para 7.2. (iii) above i.e. reply to queries raised undercover of our letter dated 1 August 2014, the KPT has responded vide its letter dated 19 August 2014. As stated earlier, on perusal of the reply furnished by KPT vide its letters dated 19 August 2014, it was observed that there are still some information gaps in the information furnished by the KPT. The KPT was, therefore, vide our letter dated 3 September 2014 requested to furnish additional information/clarification arising out of KPT letter dated 19 August 2014. The KPT vide its letter dated 17 September 2014 has furnished its reply. A summary of the queries raised by us and reply thereon furnished by KPT vide its letters dated 19 August 2014 and 17 September 2014 is tabulated below:

<table>
<tr><th>Sl. No.</th><th>Queries raised by us</th><th>Reply of KPT</th></tr>
<tr><td>(1).</td><td><u>GENERAL</u></td><td></td></tr>
<tr><td>(i).</td><td>KPT has not given the tariff filing Forms viz., Form 1, Form-2A and Form 2B prescribed in the Formats to be submitted along with the proposal for revision of Estate Rentals. The KPT to submit these forms duly filled in.</td><td>The relevant Forms viz. Form 1, Form-2A and Form 2B prescribed in the Formats are furnished.</td></tr>
<tr><td>(ii).</td><td>As per Notes 1, 2 and 3 respectively to Form - 1, KPT is required to furnish the following:</td><td></td></tr>
<tr><td>(a).</td><td>A certificate confirming that KPT’s proposal for lease rentals is in conformity with the Land policy for Major Ports-2014 approved by Government of India.</td><td>It is confirmed that the proposal for revision of the lease rentals of Kandla land is in conformity with the Land Policy for Major Ports-2014 approved by Government of India, Ministry of Shipping.</td></tr>
<tr><td>(b).</td><td>A certificate to the effect that the land leased (category wise) is as per the Ports Land use Plan.</td><td>It is certified that Land leased (Category Wise) is as per Port Land Use Plan.</td></tr>
<tr><td>(c).</td><td>Details of leases granted by the port for commercial and other purposes, category wise separately for the last three years.</td><td>The required details are furnished as under:
<table>
<tr><th>Sr. No.</th><th colspan="3">Details of lease granted in the last 3 years</th></tr>
<tr><th>year</th><th>2011-12</th><th>2012-13</th><th>2013-14</th></tr>
<tr><td></td><td>Nil</td><td>Nil</td><td>25.24 ACRE (05 NOS. OF PLOTS) OF LEASE GRANTED ON UPFRONT BASIS THROUGH TENDER FOR THE PURPOSE OF GODOWN. (ON UPFRONT PREMIUM AND ANNUAL LEASE RENTALS OF RE.1/PLOT FOR BALANCE PERIOD.</td></tr>
</table></td></tr>
<tr><td>(iii).</td><td>If on any matter the present proposal deviates from the Land Policy-2014 for Major Ports KPT to furnish the details thereof justifying the reasons for deviations.</td><td>Not Applicable.</td></tr>
<tr><td>(iv).</td><td>Forward a copy of the Resolution of the Board of Trustees of KPT dated 10 June 2014 approving the proposal of the KPT for revision of lease rent of Kandla Lands.</td><td>Copy of the Board Resolution No. 236 dated 10.06.2014 is furnished.</td></tr>
<tr><td>(v).</td><td>The KPT to furnish a comparison of the lease rent as on 1 January 2009 approved by this Authority in the Order of 25 March 2011, the existing lease rent as on 31 December 2013 after duly escalating the rates and proposed rentals along with the impact (in terms of percentage) on account of the proposed revision.</td><td>The required information is furnished by KPT. Due to paucity of space, the reply of KPT is tabulated separately as point 10.2.</td></tr>
<tr><td>(vi).</td><td>The financial implications including the revenue generated in the last revision cycle and the additional revenue that would be generated due to the proposed revision to be furnished.</td><td>The required information is furnished by KPT. Due to paucity of space, the reply of KPT is tabulated separately as point 10.2.</td></tr>
<tr><td>(2).</td><td>The KPT in its proposal has sought approval of this Authority for revision in the rate structure of KPT Land i.e. Fixing of Reserve Price/ Market</td><td>The KPT in its proposal has sought approval of this Authority for Revision in the rate structure of KPT Land i.e. Fixing of Reserve</td></tr>
</table>

	Value for categories of land "A" to "G". In this regard, it is relevant to mention that as per Section 49 (1) of the Major Port Trust Act, 1963 the mandate given to this Authority is to frame Scale of Rates and prescribe statement of conditions for use of port land and properties belonging to the Major Port Trust. The Act does not authorise this Authority to fix Reserve Price/ market value of land belonging to the Major Port Trusts. Bringing out the above position in the statute, we have vide our letter No.TAMP/8/2014-Gen dated 18 March 2014 requested the Ministry of Shipping to consider suitable amendments in the Land Policy Guidelines. Reply of the Ministry of Shipping is awaited. The KPT to, therefore, kindly note that in view of the statute position, this Authority will be in a position to approve the lease rent as per the KPT proposal and not the Reserve price/ Market value of lands until response of the MOS is received.	Price/Market Value for categories of land " A" to "G" as per the clause No. 18(c) of Land Policy Guidelines - 2014 for Major Ports.
(3).	**Valuation of Port Land**	
(i).	As per clause 18(a) of Land Policy Guidelines for Major Ports-2014 issued by the Ministry of Shipping (MOS) effective from 2 January 2014, the Land Allotment Committee (LAC) should take into account highest of the following factors to determine the latest market value of port lands viz. (a). State Government's ready reckoner of land values in the area, if available for similar classification/ activities, (b). Highest rate of actual relevant transactions registered in last three years in the Port's vicinity (the vicinity of the Port is to be decided by the respective Port Trust Boards), with an appropriate annual escalation rate approved by the Port Trust Board, (c). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (d). Rate arrived at by an approved valuer appointed for the purpose by the Port and (e). Any other relevant factor as may be identified by the Port. If the highest factor is not chosen, then the reasons for the same have to be recorded in writing. Neither the valuation report nor the report of the Land Valuation Committee indicates that valuation of land is done under all the above five options prescribed in clause 18(a) of the Land Policy Guidelines of 2014 to derive the highest market value of land except for categories of land at "A" and "G". The KPT, therefore, to furnish the market value of land assessed under all the options along with recommendations of Land Valuation Committee (LVC) of the KPT in line with the provisions prescribed in the Land Policy Guidelines of 2014.	Land Valuation Committee recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014, taking into account the highest of the factor mentioned in the above policy, to determine the latest market value of port land, as per the categories, as suggested by the Land Valuer and same has also been incorporated in the minutes of the Land Valuation Committee meeting held on 10.03.2014 and 23.04.2014. The copies of the same have already been forwarded vide letter No.LW/PL/3267/351 dated 26.06.2014.

(ii).	At page 36 of the Land Valuation Report, the Valuer has given the "Reference Gujarat Government Stamp duty Rates" which mostly pertains to the period 2010. For Sr. No.1 and 2 therein the valuation is for the period 2012 and 2011 respectively. No correlation could be drawn to the land valuation given in page 36 of the Valuation Report and value of land as per State Government Ready Reckoner given at ₹1,050 per sq. mtrs. for categories 'A' and 'G'. It is also not clear as to how the Ready Reckoner rate of 2010, 2011 and 2012 can be relevant for the current exercise which is for the period post 2012 (1 January 2014). The KPT to clarify the position.	**<u>Reply furnished vide letter dated 19.8.2014:</u>** A copy of Land Policy Guidelines -2014 was given to Govt. Approved Valuer and Valuation has been carried out as per Guidelines/other factors. A copy of Valuation Report has already been sent to TAMP alongwith proposal. However, comments of Land Valuer is being obtained. **<u>Subsequent reply furnished by KPT vide its letter dated 17.9.2014</u>** Different methods of valuation for each categories have been adopted & ready reckoner is used only to arrive at other option for derivation of valuation. The highest among them is adopted and discussed as below :- 1). Valuation derived from existing base rent for different categories by adopting Rate of Capitalization and Rate of Return which is as per para 5.2.2.3 of guidelines of Ministry of Finance and it reads as under : "Rates of Capitalization as per Ministry of Finance: The Government has specified year's purchase in rule 3 of schedule III of W.T. Act of 1957. These are 12.5 for freehold, 10 & 8 for lease hold properties where the unexpired period of lease of land is 50 years or more and less than 50 years respectively." 2). Latest transaction (only for the "D" category) of plot No.18, 19, 26 are available for Kandla Port land. 3). Existing TAMP Rates have been adopted by following Capitalization method to arrive at the valuation of "E" category. It includes monthly rental of open storage yard and covered godown. 4). Since there is no transaction available for most of the Land categories, stamp duty rates of adjoining lands have been adopted of nearby villages as a reference to arrive at the present valuation of Kandla land ,after applying incremental factor of 5% per year. This incremental factor is adopted for the Annual Statement of Rates (ASR) for assessment of the calculation of stamp duty as per ASR Guidelines by the Government of Gujarat. "The provision of section 32(A) of the Bombay Stamp Act, 1958 provides that Stamp Duty Shall be recovered at the time of registration of the documents of transfer & sale of properties. With the help of market value of property and related information the first ASR (Jantri) was prepared by the government of Gujarat in the year 1984 which came into being by 1992 with

		required modifications. The last ASR (Jantri) prepared during the year 1999. Recently the state Government has taken decision to increase 50% flat to the Jantri of 1999 and 5% increase every year till any other decision". **Rental Method of Valuations:** Rental method of valuation has been adopted, wherever rental details are available, particularly for "D" & "G" category. Also, highest value from all the above options has been taken. Hence, it is to state that all the working from lease rent through rental method is considered as valuation of lease hold property. And the valuation worked out with reference to the adjoining land, the valuation worked out in that manner can be considered as valuation of freehold land. Further, deduction factor of 25% shall be applied in the aforesaid case to come at the valuation of freehold property. After going through entire valuation Report, it is derived as under : "Valuation derived for all the categories "A" to "E" by method of existing lease rent is higher than valuation derived from Freehold valuation of adjoining land". Hence final summary of valuation given is for Lease hold property. Therefore no deduction is required.
(iii).	The valuer approved by the KPT has assessed the value of land on three basis viz. (a). land without reclamation and with infrastructure (b). land with reclamation and with infrastructure; and (c). As and where basis The relevance of determining the land valuation on the above first two methods to be explained by KPT as only the value of land on "as and where" basis is considered by KPT.	Valuer has assessed the value of land on above mentioned three basis, thus detailed assessment has been made, but land was allotted or shall be allotted in future on "As and Where Basis" (except inside the docks). Land Valuation Committee recommended the same in its meeting held on 10-03-2014 and 23-04-2014 respectively.
(iv).	As regards Category A, the valuer has valued the land on "as and where basis" at ₹2060 per sq. mtr. As against that the KPT has considered the value of land at ₹3942/- per sq. mtr. based on the recommendation of LVC. The KPT has clarified that the value of land for Category A during the last revision (₹1840 per sq. mtr.) as on 1.1.2009 was higher than the value of land at 'B1' at ₹1490/- per sq. mtr. hence the value of land for category A in the current exercise is , proportionately increased to ₹3942 per sq mtr. (i.e. 1840/1490*3192).	

	Wide variation is visible in the valuation of land for Category A and B1 done independently by the valuer appointed by KPT at ₹2060 per sq. mtr. and ₹3942 per sq. mtr. which is derived on proportionate basis. In this context, clarifications sought are as below:	
(a).	The approved valuer has already assessed the market value of land for category 'A'. That being so, the logic and rationale of such proportionate adjustments with reference to land value of B1 considered in the last revision to be explained.	Land Valuation Committee recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014, taking into account the highest of the factor mentioned in the above policy, to determine the latest market value of port land & as per the categories as suggested by the Land Valuer except for Category "A" as has been derived by considering any other factors as provided in clause 18(a)(v) of Land Policy Guidelines-2014. The market value of lands received from valuer for Category "A" is less than the Category 'B' . However, existing TAMP approved rates of Category 'A' is more than that of Category 'B". Accordingly, rates of Category 'A' has been worked out proportionately to Category "B" (Rate of 2009 for Category 'A' X B1 Category as per valuer/Category B1 of 2009). This has already been mentioned in minutes of the Land valuation committee held on 23.04.14.
(b).	Lands under category A is having water front and is located half a mile from the shore whereas under category B there are two sub categories of land viz. B1 (located abutting the main road) and B2 (on internal roads). It is, therefore, not clear from the proposal whether lands at category A are similar to lands at category B1 for such proportionate adjustments done by the KPT.	Category 'A' is land having waterfront, whereas category 'B' land has no waterfront. The proportionate rate has been considered as been clarified in reply to point (iv)(a) ' above.
(c).	In the light of the above observation, the KPT to confirm that the market land value considered by the KPT for Category A is relevant and representative enough in terms of layout, facilities, development, proximity, its commercial utilisation, etc. If the KPT is of the view that the market value considered by the KPT for Category A is not be representative then the KPT to consider to amend its proposal suitably.	After confirming all relevant factors, Land Valuation Committee has considered/ recommended the rates.
(v).(a).	The valuation of land recommended for D1, D2 and D3 is reportedly based on the highest rate received in the recent auction. The KPT to clarify to which period the auction relates to the highest auction rate received. Also, confirm whether it is in compliance with the provision of land policy guidelines of 2014 which requires the highest auction rate to be updated applying applicable annual escalation.	Auction took place in year 2011. After applying applicable annual escalation on highest rate received on Auction, the rates of Category D1, D2 and D3 were derived, which is as per Land Policy Guidelines 2014 and accordingly Land allotment Committee recommended the same.
(b).	The valuation of land for sub categories D2, D3 and D4 at Page 57 of the Land Valuation Report and the land valuation in the table presented in the copy of the minutes of the meeting of the LVC dated 23 April 2014 do not match. For ease of reference, comparative	

<table>
<tr>
<td></td>
<td>position is given below:

<u>Valuation of Land by Approved Valuer:</u>

<table>
<tr><th rowspan="2">Sr. No.</th><th rowspan="2">Category</th><th colspan="2">Land without reclamation but with infrastructure</th><th colspan="2">Land with reclamation and infrastructure</th><th colspan="2">As and where basis</th></tr>
<tr><th>As per valuation report pg-57</th><th>As tabulated in the Minutes of meeting dtd. 23.04.2014 of the Land Valuation Committee</th><th>As per valuation report pg-57</th><th>As tabulated in the Minutes of meeting dtd. 23.04.2014 of the Land Valuation Committee</th><th>As per valuation report pg-57</th><th>As tabulated in the Minutes of meeting dtd. 23.04.2014 of the Land Valuation Committee</th></tr>
<tr><td>1.</td><td>D2</td><td>2,250/-</td><td>2,131/-</td><td>2,925/-</td><td>2,770/-</td><td>2,025/-</td><td>1,920/-</td></tr>
<tr><td>2.</td><td>D3</td><td>2,131/-</td><td>2,366/-</td><td>2,770/-</td><td>3,080/-</td><td>1,920/-</td><td>2,131/-</td></tr>
<tr><td>3.</td><td>D4</td><td>2,368/-</td><td>2,250/-</td><td>3,080/-</td><td>2,925/-</td><td>2,131/-</td><td>2,025/-</td></tr>
</table>

The KPT to intimate the corrected position in respect of these sub-categories.</td>
<td>There was a difference in description of final summary of D category page 57 of Land Valuation Report and final summary as and where basis in pg. 15. The valuation at pg. 57 is correct and same has been corrected in pg. 15 and copy of it is enclosed herewith. Same shall be considered as Final Summary. Accordingly rates recommended for D4 category i.e. “Plots abutting to KK road near zero point and railways crossing, 25 acres plots and other plots” may now be considered as ₹2131/- instead of ₹2025/-.
[The KPT has not addressed on the mismatch observed in D2 and D3 category.]</td>
</tr>
<tr>
<td>(c).</td>
<td>The proposal of KPT includes lease rent for sub categories D3 and D4 which were not prevailing in the last revision of Kandla lands. Explain the circumstances for introduction of these new categorization as D3 and D4. Please also clarify whether categories of the lands at D3 and D4 were covered under some other categories under the existing arrangement and, if so, the existing lease rent applicable for the same is to be brought out.</td>
<td>As per Land use plan of July 2011, strip of property from zero point circle to KPTZ circle on south of national highway is marked as commercial institution, the property marked as D5 on south of national highway outside west gate. Since there was no reference taken in previous valuation, hence same has been marked as new D5.

D4 category is considered for land west of KK land as shown in land use plan. This D4 category earlier was considered in C2 category (other plots).

Hence, these new categories have been introduced as D4 & D5, as valuation rates are different, but purpose is same.</td>
</tr>
<tr>
<td>(vi).</td>
<td>Whilst for all the categories of land except A, D1, D2, D3 and G, the KPT has relied upon valuation of the land given by the land valuer on “as and where basis”, specific reasons for considering the valuation of land based on “land with reclamation and with infrastructure” in respect of category “E” alone to be explained. In other words, please state the reasons for not considering the valuation of land on “as and where basis” for category “E” as done for other categories of land.</td>
<td>Category 'E" is the area which comes within the docks area and developed by KPT, accordingly the rate recommended for value of "land with reclamation and with infrastructure " and has been considered by Land Valuation Committee.</td>
</tr>
<tr>
<td>(vii).
(a).</td>
<td>As regards category ‘G’ (sub categories G1 and G2), the table presented in the copy of the minutes of the meeting of the Land Valuation Committee dated 10 March 2014 under option “Others” states that the Board vide Resolution dated 16 July 2013 approved weighted average rate of ₹10,523.18 per sq. mtr. with 2% escalation every year and informed the Ministry/ Supreme Court. The KPT to elaborate and give a brief background on what context and for what purpose, the KPT Board approved weighted average rate of ₹10,523.18 per sq. mtr. with 2% escalation every year and informed the Ministry/ Supreme Court.</td>
<td>A copy of Agenda and Minutes is enclosed at Annexure – “G”. The matter was informed to Ministry only.

[The KPT has not furnished any brief background on this matter. It has only forwarded a copy of the agenda and minutes.]</td>
</tr>
</table>

(b).	It is seen that in June 2014, the KPT Board for the same G1 and G2 categories has approved land valuation at ₹15086.13 and ₹9959.89 respectively which is different from the approval accorded by KPT Board in July 2013. The KPT to confirm the land valuation approved latest by the Board in June 2014 is to be considered for revision of lease rentals of KPT land. Also, confirm that these land valuation will not in any way conflict with the land valuation reportedly communicated by the KPT to Ministry and Supreme Court in July 2013.	It is confirmed that Land Use Plan approved by Board in June 2014 should only be considered. As Supreme Court matter was over and decided it will not any way conflict with the land valuation reportedly communicated by the KPT to Ministry only. [The reply of KPT mentions about land use plan. It is, however, seen from its proposal dated 26 June 2014 that Board of KPT has approved market value of G1 and G2 at ₹15086.13 per sq. mtr. and ₹9959.89 per sq. mtr. respectively]
(c).	For G2 category, valuation of land arrived by the approved valuer is ₹8170 per sq. mtr. The LVC has recommended the value of land at ₹9959.89 lakhs by proportionately adjusting (upwards) the land valuation given by the approved valuer with reference to the valuation of land recommended for G1 category at ₹15,086.13 per sq. mtr. (based on the highest accepted tender). The minutes of the LVC and the proposal of the KPT does not explain the reasons for such upwards revision done in the land valuation of G2. The KPT is requested to confirm whether the market value of land so derived by the KPT for G2 is a realistic value and is representative enough in terms of layout, facilities, development, proximity, its commercial utilisation, etc.	It is confirmed that the market value of the land so derived by the KPT for G2 is a realistic value and is representative enough in terms of layout, facilities, development, proximity, its commercial utilization, etc.
(viii).	The proposal of the KPT does not mention the periodicity for which the revised lease rent is proposed. The Land Policy Guidelines of 2014 do not prescribe periodicity for review of the Scale of Rates of port lands approved by the TAMP. It is, however, relevant here to mention that clause 6.1.(3)(d) the Land Policy of the 2010, as well as clause 5.3(I)(d) of Land Policy guidelines of 2004 stipulate that the SOR will be revised every five years. The KPT is, therefore, to prescribe periodicity upto which the revised lease rent will apply. It is relevant to state here that the MOS has also been requested to make suitable amendment in the guidelines so as to prescribe periodicity of revision of lease rent in line with the 2004 and 2010 guidelines.	The periodicity of proposed revised lease rent is for the period 01-01- 2014 to 31-12-2018, with approved escalation per year.
(ix).	The KPT has sought approval to the revised rates retrospectively w.e.f. 1 January 2014. In this context, the KPT to confirm that the lease agreements with the lessee/ licensees contain a clause allowing for retrospective revision of rental.	The undertaking taken from lessees containing conditions allowing retrospective revision.
(4).	**Scale of Rates (SOR)**	
(i).	The proposal of the KPT does not include conditionalities governing the proposed lease rent for Kandla Lands except for one note on escalation factor. The KPT to incorporate the conditionalities governing the proposed lease rent for Kandla Lands. This Authority is	As per Land Policy Guidelines 2014 and as approved by Board, 2% escalation per year is to be considered. Earlier revision of rates as approved by TAMP vide Notification No. 106 dated 11.5.2011, also does not contain any other conditionalities except for escalation

	mandated not only to prescribe Scale of Rates but also conditionalities governing the application of rates.	clause.
(ii).	Also, examine to incorporate a note stating that all the conditions/ notes prescribed in the existing Scale of Rates/ Schedule of License Fees and Lease Rentals shall apply to the extent they are not inconsistent with the conditions prescribed in the Land Policy for Major Ports-2014 announced by the Government on January 2014. In case of disagreement, the conditions prescribed by the Government in the Land Policy for Major Ports-2014 shall prevail.	No conditionalities have been incorporated in the proposed Land Revision Proposal of Kandla Port Trust. In view of the above, conditions as prevailing in the Land Policy Guidelines - 2014 shall prevail, wherever applicable.

9.2. The comparative statement furnished by the KPT giving lease rent as on 1.1.2009 approved in the last Order, duly escalated lease rent as on 1.1.2014 (we sought the duly escalated lease rent as on 31.12.2013), proposed lease rent and its impact in terms of percentage is tabulated hereunder:

Category	Description of Category	As per last Order			Proposed rates from 01.01.14		
		Market Value considered	Lease Rentals per Sq. Mtrs per annum as on 1.1.2009	Lease rent as on 01.01.14 after taking 2% escalation p.a.	Market Value as on 01.1.14	Lease Rental per sq. mtr. p.a. as on 01.01.14 (6% of market value)	Percentage Increase over escalated lease rent
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla Creek	1840	110.4	121.9	3942	236.5	94%
B	Land within half mile from the bank of the creek and having no water front						
B1	Plots abutting on main road	1490	89.4	98.7	3192	191.5	94%
B2	Plot situated on internal roads	1340	80.4	88.8	2873	172.4	94%
C	Land beyond half a mile from the bank of the creek						
C1	Plot abutting on main road	1340	80.4	88.8	1800	108	22%
C2	Other plots	1080	64.8	71.5	1500	90	26%
D	Land outside the bunder area and outside the west gate both on north as well as on the south of National Highway						
D1	Plots directly abutting on NH-8A	1670	100.2	110.6	3298	197.9	79%
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	1490	89.4	98.7	2153	129.2	31%
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	1420	85.2	94.1	3089	185.3	97%
D4	Plot abutting to KK road near zero point and railway crossing 25 acres plots and other plots				2025	121.5	29%
D5	Valuation of land to the West Gate of NH-8A towards salt works of land without reclamation but infrastructure				2565	153.9	64%
E	Land with the docks	3010	180.6	199.4	5836	350.2	76%
F	Land west of railway siding leading to Kandla Free Trade Zone and up to crossing of railway line						
F1	Plots situated on SEZ side from Kandla Railway Station	1670	100.2	110.6	3430	205.8	86%
F2	Plots situated on Ahmedabad side from Kandla Railway Station	1580	94.8	104.7	6720	403.2	285%
G	Land for Liquid Storage Tank (Description in the last tariff Order)						

Category	Description of Category	As per last Order			Proposed rates from 01.01.14		
		Market Value considered	Lease Rentals per Sq. Mtrs per annum as on 1.1.2009	Lease rent as on 01.01.14 after taking 2% escalation p.a.	Market Value as on 01.1.14	Lease Rental per sq. mtr. p.a. as on 01.01.14 (6% of market value)	Percentage Increase over escalated lease rent
	(Description in the current proposal. No such sub-categories existed in the last order. G1 and G2 sub-categories proposed in the current proposal)						
G-I	Land Situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek	7380	442.8	488.89	15086	905.2	85%*
G-II	Land from West Side of Nakti Creek for kharirohar having existing Oil Terminal of IOCL, HPCL and BPCL				9960	597.6	22%*

[*The percentage increase of G1 and G2 is done with reference to the lease rent for G category in the last Order]

9.3. The financial implications including revenue generation in the last tariff cycle and the additional revenue that would be generated at the proposed tariff cycle forwarded by the KPT to one of our queries is tabulated below:

Sr. No.	**LAND SQ. MTRS.**	**CATE**	**RATE OF 2009 (PER SQ. MTRS)**	**TOTAL ANNUAL LEASE RENT i.e. 2009**	**RATE OF 2013 (PER SQ. MTRS)**	**TOTAL ANNUAL LEASE RENT i.e. 2013**	**RATE OF 2014 (PER SQ. MTRS)**	**TOTAL ANNUAL LEASE RENT i.e. 2014**
1	747953	**A**	110.40	82573987.00	119.50	89380358.00	236.52	176905794.00
2	4494	**B1**	89.40	401803.00	96.77	434927.00	191.52	860775.00
3	70935	**C1**	80.40	5703172.00	87.03	6173473.00	108.00	7660980.00
4	17715	**C2**	64.80	114794.00	70.14	1242530.00	90.00	1594350.00
5	63646	**D1**	100.20	6377329.00	108.46	6903045.00	197.88	12594270.00
6	3157	**E**	180.60	570155.00	195.49	617162.00	350.16	1105455.00
7	222620	**F1**	100.20	22306525.00	108.46	24145365.00	205.80	45815196.00
8	69918	**F2**	94.80	6628226.00	102.61	7174286.00	403.20	28190938.00
9	532419	**G1**	*****	66412637.00	****	71887461.00	905.17	481929942.00
10	1923439	**G2**	80.40	154644496.00	87.03	167396897.00	597.59	1149427912.00
TOTAL	3656296			346,766,264.00		375,355,504.00		1,906,085,612.00

NOTE: *****THERE ARE DIFFERENT CATEGORY UPTO 31-12-2013.

(₹ in lakhs)

INCOME AS PER PRE REVISED RATE 2009-10	3,468.00	PROPOSED INCOME AS PER PRE REVISED RATE 2014-15	19,061.00
INCOME AS PER PRE REVISED RATE 2010-11	3,537.00	PROPOSED INCOME AS PER PRE REVISED RATE 20115-16	19,442.00
INCOME AS PER PRE REVISED RATE 2011-12	3,608.00	PROPOSED INCOME AS PER PRE REVISED RATE 2016-17	19,831.00
INCOME AS PER PRE REVISED RATE 2012-13	3,680.00	PROPOSED INCOME AS PER PRE REVISED RATE 2017-18	20,228.00
INCOME AS PER PRE REVISED RATE 2013-14	3,754.00	PROPOSED INCOME AS PER PRE REVISED RATE 2018-19	20,633.00

PERCENTAGE INCREASE IN INCOME FROM RATE OF 2009 TO PROPOSED RATE OF 2014	549.67	%
PERCENTAGE INCREASE IN INCOME FROM RATE OF 2013 TO PROPOSED RATE OF 2014	507.81	%

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 the information collected during the processing of this case, the following position emerges:

(i). The lease rents for Kandla lands (categories A to G) of Kandla Port Trust (KPT) were last revised by this Authority vide Order No.TAMP/21/2010-KPT dated 25 March 2011. In the said Order, the lease rents for Kandla lands were approved for three quinquennium viz. July 1999 to 31 December 2003, 1 January 2004 to 31 December 2008 and for the period 1 January 2009 till 31 December 2013. The revised lease rentals approved by this Authority in the said Order were given retrospective effect. The validity of lease rent of Kandla lands was prescribed till 31 December 2013. The current proposal filed by the KPT is for revision of lease rent of Kandla Lands for categories A to G from the date of expiry of original validity i.e. from 1 January 2014.

(ii). (a). For the purpose of determining lease rentals for the lands belonging to the Port Trusts, this Authority is mandated to follow the land policy guidelines issued by the Government from time to time vide clause 8 of the tariff policy guidelines issued by the Government in March 2005 as policy direction under Section 111 of the Major Port Trusts Act, 1963. The Ministry of Shipping in the Government of India has announced Land Policy Guidelines for Major Ports, 2014 in January 2014 which came into effect from 2 January 2014. The said guidelines have been approved by the Union Cabinet. The KPT has filed its comprehensive proposal seeking approval of this Authority for revision in the rate structure of KPT Land i.e. Fixing of Reserve Price/ Market Value for categories of land “A” to “G” following the Land Policy Guidelines for Major Port Trusts, 2014.

(b). Para 18 of the Land Policy Guidelines for Major Ports, 2014 issued by the Ministry of the Shipping has provided for factors for determination of Market value of port land. The methodology for determination of market value of the port land based on the five factors prescribed in para 18(a) of the Land Policy guidelines of 2014 is similar to the provisions contained in the Land Policy guidelines of 2010. The 2014 guidelines, however, recommends that normally the highest of the five factors for determination of the latest market valuation of land should be considered. If the latest market value of land is not chosen based on highest of five factors, then the reasons are to be recorded in writing. Clause 18(b) of the guidelines stipulates that Reserve Price in terms of annual lease rent would be arrived as percentage of latest market value of land determined based on the five factors in accordance with para 18(a) and that the percentage should not be less than 6% which is to be fixed by the Port Trust Board. Further, clause 18(c) of the Land Policy Guidelines for Major Ports 2014 requires the concerned Major Port trust to file a proposal to this Authority for fixing the market value of the land and this Authority is required to notify the market value of land. Thus, as per clause 18(c) of the revised Land Policy Guidelines, this Authority is required to notify the market value of the port lands.

(c). In this regard, it is noteworthy that as per Section 49 (1) of the Major Port Trusts (MPT) Act, 1963 the mandate given to this Authority is to frame Scale of Rates (SOR) and prescribe statement of conditions for use of port land and properties belonging to the Major Port Trust. The earlier Land Policy guidelines of 2010 as well as of 2004 clearly mandated this Authority to determine the Scale of Rates of the lands of the Major Port Trust and not the market value of land. Accordingly, in the last tariff Order of March 2011, this Authority has approved lease rent (SOR) for Kandla lands. Bringing out the position in the statute, the Ministry of Shipping (MOS) has been requested vide our letter No.TAMP/8/2014-Gen dated 18 March 2014 to consider suitable amendments in the Land Policy Guidelines of 2014 in line with the statute position. The response of the

Ministry of Shipping is awaited. The above statute position was also brought to the notice of the KPT. The KPT in response has categorically stated that it seeks approval of this Authority for revision in the rate structure of KPT Lands i.e. Fixing of Reserve Price/Market Value for categories of land "A" to "G" as per the Clause No.18(c) of Land Policy Guidelines - 2014 for Major Ports. If a reference is drawn to the Clause 18 (b) of 2014 Land Policy Guidelines, the term "Reserve Price" connotes the meaning of Annual Lease Rent (SOR). It is thus seen that the KPT has sought approval of this Authority to notify both the Market value of land as well as the Reserve Price (SOR) for its Kandla lands.

As stated above, the term "Reserve Price" in para 18(b) of the Land Policy Guidelines of 2014 has been equated to the annual lease rent. Further, as per para 16.2(d) of the Land Policy Guidelines (though it relates to lease of land through tender-cum-auction methodology in a competitive bidding process) stipulates that the reserve price shall be worked out by the Land Allotment Committee (LAC) of the port, approved by the Board Trust and by this Authority. Thus, from an harmonious reading of the clauses 18(b), 18(c) and 16.2(d) of the land policy guidelines, it can be seen that the Authority is mandated to notify reserve price equated to annual lease rent as well as market value. The mandate to notify the reserve price is of course possible subject to the condition that the percentage to be applied on the market value of land (which should not be less than 6%) is approved by the Port Trust Board as per the stipulation in clause 18(b) of the Land Policy guidelines of 2014.

So far as the proposal of the KPT is concerned, it is seen from the copy of minutes of the Board meeting of the KPT forwarded by the port, that the Board of Trustees of KPT has approved the market value of land. The Board has also approved the reserve price in terms of annual lease rent applying 6% on the market value of land for G1 and G2 categories on 24 March 2014 and for other categories of land viz. A to F on 10 June 2014. That being so, as per the provisions of the Land Policy guidelines of 2014, this Authority proceeds ahead with the proposal of the KPT to notify both proposed market value of land and the Reserve Price in terms of annual lease rent.

(iii). The Gandhidham Chamber of Commerce and Industry (GCCI) and Hindustan Petroleum Corporation Limited (HPCL) have questioned the jurisdiction of this Authority to fix the lease rent for letting of port trust lands outside the port limits. In their opinion, this Authority is primarily concerned with tariff concerning port operations and that rates approved by this Authority outside port limits are not binding on port trusts/ Kandla Port Trust tenants/ lessees.

In this context, the GCCI and HPCL have also drawn reference to a case filed by the Mumbai Port Trust (MBPT) in the Honb'le High Court of Bombay challenging the tariff Order dated 15 March 2000 passed by this Authority setting out the legal position about the jurisdiction of this Authority in respect of framing Scale of Rates and statement of conditions for use of port properties. Citing the pending court case of MBPT where the Hon'ble High Court has granted stay which is not yet vacated, the GCCI and the HPCL have argued that this Authority does not have jurisdiction to fix/ approve lease rents for Kandla lands belonging to KPT outside the port limits.

The contention of GCCI and HPCL is not in line with the statutory powers conferred on this Authority. In this regard, it is relevant here to state that under Section 49(1) of the Major Port Trusts Act, this Authority is empowered to frame the Scale of Rates and the Statement of Conditions for use of the following categories of property:

(a). Property belonging to the Board or
(b). Property in possession of the Board or
(c). Property in occupation of the Board or
(d). Property in any place within the limits of the port area or port approaches specified in the sub-section (a) to (d) of Section 49(1) of the MPT Act.

Thus, as per the statue, for purpose of framing Scale of Rates and Statement of Conditions of port lands, this Authority has jurisdiction relating to all the properties of a Major Port Trust wherever located i.e. irrespective of location inside the port limits or outside the port limits. In any case, we have not received any direction from the higher judicial forum extending the stay granted by Hon'ble Bombay High Court to other Major Port Trusts restraining this Authority to fix lease rentals for properties of Major Port Trusts lying outside the port limit.

(iv). Before proceeding ahead with the analysis of the case, it is be stated that various lessees have filed Writ Petitions before the Hon'ble High Court of Gujarat mainly challenging the retrospective revision in the lease rents of Kandla lands last approved by this Authority vide its Order dated 25 March 2011, as brought out earlier.

The IFFCO has stated that aggrieved by the last tariff Order of this Authority dated 25 March 2011 it has filed a Special Civil Application (SCA) No.2607 of 2012 and 673 of 2014 in the Hon'ble High Court of Gujarat seeking for certain reliefs related to revision of rate structure.

The HPCL has stated that in view of SCA filed by it before the Hon'ble High Court of Gujarat at Ahmedabad challenging the rates approved in March 2011 Order, which is pending before the Court, fixation of new rates is not justified.

It is relevant here to state that the Hon'ble High Court has not granted any stay on the Order of this Authority dated 25 March 2011 in the Writ Petition/ SCA(s) filed by lessees/ users including IFFCO and HPCL. Further, the SCA / Writs Petitions filed by the HPCL, IFFCO and other lessees relate to the last revision of the Kandla Lands which had a validity period upto 31 December 2013. The current exercise in hand is for revision of rate structure of Kandla land beyond the expiry of its validity prescribed in the last tariff Order.

The current proposal has been filed by the KPT following the Land Policy guidelines of 2014 for the period from 1 January 2014 and onwards. As per the statute, this Authority is mandated to notify the rates and conditionalities for any property belonging to or in the possession or occupation of the concerned port trust. Further, clause 8 of the tariff policy guidelines issued by the Government in March 2005 also mandates this Authority is to follow the land policy guidelines issued by the Government from time to time for revision of lease rental of Major Port Trusts Lands. There is no direction or order from the Hon'ble Court of Gujarat in the Writ Petition/ SCAs filed by various lessee on the last Order of March 2011 restraining this Authority to undertake the statutory obligation of fixing the lease rents of Kandla Lands for the period beyond the validity prescribed in the last Order i.e. beyond 31 December 2013.

(v). (a). As per clause 18(a) read with clause 16.2(e) of the Land Policy Guidelines 2014, a Land Allotment Committee (LAC) constituted by the Port Trust Board consisting of Deputy Chairman of the Port, and Heads of Departments of Finance, Estate and Traffic shall determine the market value of land as per the methodology prescribed in clause 18(a). Accordingly, the KPT has reported that Land Valuation Committee (LVC) headed by the Dy. Chairman of the Port and the Heads of Departments of Finance, Estate and Traffic as other members was constituted. An approved land valuer was also engaged by KPT for assessing the market value of the Kandla lands as per Clause 18 (a)(iv) of Land Policy

Guidelines of 2014. The LVC after going through various aspects reported by the approved valuer and after considering the parameters provided under Clause 18(a)(i) to (v) of Land Policy Guidelines, 2014 has recommended the market value of the Kandla Land. Further, the proposal for fixing market value of land and reserve price in terms of annual lease rentals for Kandla Lands for the Categories "A" to "G" has also been approved by the Board of Trustees of KPT in its Board meeting held on 24 March 2014 (for category G) and on 10 June 2014 (for categories A to F) based on the recommendation of the LVC.

Thus, the proposal filed by the KPT which is supported with the copy each of the Valuation Report of the approved valuer, approved by the LVC constituted by the port recommending the market value of land and Reserve Price and which also has the approval of the KPT Board is found to be in compliance with the Land Policy guidelines of 2014 and, therefore, relied upon for disposing of this case.

(b). As regards the submission made by the GCCI and Bharat Petroleum Corporation Ltd. (BPCL) that approved valuer appointed by the KPT is not professionally qualified nor experienced in carrying out the valuation of gigantic and huge chunk of land and that stakeholders have not been involved for finalisation of the valuer, the KPT has clarified that a Government approved land valuer was engaged by the KPT as per clause of 18(iv) of the land Policy Guidelines for assessing the market value of the Kandla land estate. The KPT has also confirmed that M/s.K.M. Thacker & Associate is a reputed Government approved Land Valuer engaged through E-Tender after fulfilling the criteria fixed by Tender Allotment Committee. As rightly stated by the KPT, the Land Policy guidelines of 2014 do not require the concerned port trust to consult the users for finalising the approved valuer or the lease rental proposal for that matter. In any case, the concerned stakeholders have been consulted by this Authority on the subject proposal along with copy of the valuation report and other relevant documents forwarded by KPT in accordance with the consultation process prescribed in the guidelines of 2005 giving them an opportunity to express their views in the joint hearing and furnish written comments on the proposal filled by KPT.

(vi). (a). Para 18 (a) of the Land policy guidelines of January 2014 prescribes the methodology for determination of market value of the land based on the five factors as prescribed therein. In terms of the said para of the Land policy guidelines of 2014, the Land Allotment Committee will normally take into account the highest of the factors mentioned therein, viz. (i). State Government ready reckoner of land values in the area if available for similar classification/activities, (ii). Highest rate of actual relevant transactions registered in the last three years in the Port's vicinity with an appropriate annual escalation rate to be approved the Port Trust Board, (iii). Highest accepted tender-cum-auction rate of Port land for similar transactions, updated on the basis of the annual escalation rate approved by the Port Trust Board, (iv). Rate arrived at by an approved valuer appointed for the purpose by the Port and (v). Any other relevant factor as may be identified by the Port. The Land Policy guidelines of 2014 also stipulate that in case the LAC is not choosing the highest factor, the reasons for the same have to be recorded in writing.

(b). When asked to furnish the market value of land assessed under all the options along with recommendations of the LVC in line with the provisions prescribed in the Land Policy Guidelines of 2014, the KPT has clarified that valuation of land is done as per the parameters provided under Clause No.18(a) (i) to (v) of Land Policy Guidelines-2014 and has further clarified the position as given below:

(i). Since no Jantari Rate is available for Kandla lands, the market value of land of nearby village for land used for commercial purpose is considered.

(ii). The KPT has stated that as per the approved valuer there have been no transaction for most of the Land categories. Hence, stamp duty rates of adjoining lands have been adopted of nearby villages as a reference to arrive at the present valuation of Kandla land, after applying incremental factor of 5% per year. The incremental factor is as per the guidelines on Annual Statement of Rates (ASR) issued by the Government of Gujarat.

(iii). Highest accepted tender are available with reference to three plots relating to subcategories D2, D3 and D4 under category D as well as for lands in G1 category which has been considered as one of the factors for arriving at the valuation of land. Since auction rates for these plots related to year 2011, the market value of land as on 1 January 2014 is arrived after applying applicable annual escalation of 2% as per Land Policy Guidelines 2014.

(iv). Further, the port has engaged a Government approved valuer in February 2014 for undertaking valuation of Kandla Lands for all categories A to G and has also forwarded a copy of the Land valuation report submitted by the approved valuer in this regard.

The KPT has clarified that the valuer has derived land valuation from existing base rent for different categories by adopting Rate of Capitalization and Rate of Return. Rental method of valuation has been adopted, wherever rental details are available, particularly for “D” & “G” category. Existing Rates approved by this Authority have been adopted by following Capitalization method to arrive at the valuation of “E” category.

The approved valuer has assessed the land value for each categories of land on three basis viz. (a). land without reclamation and with infrastructure; (b). land with reclamation and with infrastructure; and (c). as and where basis. This is done for detailed assessment. But, since land is allotted or shall be allotted in future on "As and Where Basis", the land valuation on “As and Where Basis” are considered by the port while adopting this method of land valuation of approved valuer except for category “E” which is explained in subsequent paragraphs.

(v). For the two categories viz. ‘A’ and ‘G2’, the land valuation as per the last option i.e. any other relevant factor has also been considered by the KPT for reasons stated by the port which is discussed in the subsequent paragraphs.

Thus, as per clarification furnished by the port, valuation of Kandla lands is done with reference to the five factors prescribed in the land policy guidelines. As per clause 18(a) of the Land Policy guidelines of 2014, the Kandla Port Trust has proposed market value of land based on the highest of the market value of land obtained for each of the categories.

(vii). (a). Some of the organization bodies / lessees like GCCI, HPCL, etc., have raised objections on the market value of land and the reserve price proposed by the port. They are summarized below:

(i). The Gujarat Chamber of Commerce and Industry (GCCI) has contended that it is not appropriate to apply the valuation of land done for free hold land to lease hold land.

(ii). Both the GCCI and HPCL have pointed out that valuation of land considered by KPT is based on the recent transactions 20 kms away which are not be relevant for Kandla Lands.

(iii). Drawing reference to the lease rent at the adjoining private port at Mundra ₹36 per sq. mtrs., a few users/ lessees have requested for a similar lease rent for Kandla Land.

(iv). One of the major objections raised by the oil industry viz. HPCL, BPCL is that until the year 2013 the oil industry were categorized under C1. However, in current proposal a new category is created for oil terminal i.e. G 2. Such re-categorization is done without any scientific approach or logic and the increase works out very steep at 592%. They apprehend that with such a steep hike in lease rent will decline the port's business which may drift to other competing neighbouring ports.

(b). In view of the objections raised by various lessees on the proposal of the KPT, the KPT was specially advised to relook at its proposal and file a revised proposal following the provisions of the land policy guidelines of 2014. While doing so, specific reference was drawn to Clause 18(a) of the Land Policy guidelines which stipulates that the LAC will normally take into account the highest of the five factors prescribed in the guidelines to recommend the latest market value of land. But, the said clause also allows an option to the LAC to choose a market value of land which need not be the highest of the five factors for reasons to be recorded in writing.

(c). With reference to the point made by GCCI that it is not appropriate to apply the valuation of land done for free hold land to lease hold land, as clarified by the KPT, for free hold land, the land valuation is derived with reference to the adjoining land. However, as per the valuation report, for all the categories of land under "A" to "E", the market value of land as per the existing lease rental method is higher than valuation derived from freehold valuation of adjoining land. Hence, as per Land Policy guidelines of 2014 requiring to take highest of all the land valuation, the valuation of land derived for freehold land with reference to adjoining land is not finally reckoned with to propose the rate.

With reference to the point made by GCCI and HPCL that valuation of land considered based on the recent transactions relate to transaction 20 kms. away from the port lands which is not relevant, the KPT has considered the transaction of 20 kms. away land only to cross check the valuation derived from lease rent method and to create an additional option to arrive at most suitable and justified valuation. That land valuation has not been finally adopted for proposing the market value of land/ reserve price.

With reference to the observation that the lease rent of ₹36/- per sq. mtr. levied at the adjoining private port, it has to be recognised as rightly clarified by the KPT, that the rate revision of Kandla Lands is done following the provisions of the Land Policy Guidelines 2014 issued by the Ministry of Shipping, Government of India. The reference to the rates levied by private port cannot be applied to its port. As also rightly stated by the KPT, the private ports do not come under the ambit of tariff regulation of this Authority as per the statute nor are they governed by the Land Policy Guidelines of 2014 issued by the Ministry of Shipping. Both the KPT and this Authority are governed by the Land Policy Guidelines of 2014 for fixation of market value of land and the reserve price in terms of annual lease rent.

With reference to the objection raised by users about new sub categorisation G1 and G2 under category G, proposed in the current proposal as against a single category G in the last Order, the KPT has sought to clarify that the rates are to be fixed considering purpose also. So, all lessees, who have been allotted the land for 'Liquid Tanks' have been categorised under G-I & G-2 categories irrespective of distance. The KPT has reported that C1 category has now been shifted as G-2 from 01.01.2014 as per the valuation report submitted by the approved valuer appointed for valuation of Kandla Land rates for tanks terminals. This categorisation has also been recommended by the LVC and has also been approved by the KPT Board.

(d). While replying to the objection of the user organisation/ lessees the KPT has sought to maintain the market value and reserve price as per its original proposal of June 2014. It has to be recognised that the Land Policy Guidelines of 2014 recommends normally valuation of land should be done based on the highest of the five factors. The proposal of June 2014 proposed to be maintained by the KPT is found to be in compliance with the Land Policy guidelines of 2014. The KPT has also confirmed that the Government approved Valuer in the valuation report has mentioned that the valuation of land has been carried out as per the scientific method, standard norms have been taken into consideration regarding the use of land, location advantage to the business community of the port, land values adjoining to the port Estate, general guidelines and current market trends, current land rates as per KPT, Government of Gujarat, Jantri value and private market survey etc. KPT has opined that considering all the parameters realistic approach of valuation is arrived at by the approved valuer. The said valuation report has been examined by LVC constituted by the KPT as per the provisions of the Land Policy Guidelines of 2014 and the LVC has recommended the market land of value and reserve price at 6% of market value of land in terms of annual lease rent for categories G1 and G2 on 10 March 2014 and for other categories 'A' to 'F' on 23 April 2014 to be considered for arriving at the reserve Price. Then based on the recommendation of the LVC, the Board of KPT has approved the market value and the Reserve Price in terms of annual lease rent of Kandla lands on 24 March 2014 and 10 June 2014. Since the proposal filed by the KPT complies with the stipulations in the Land Policy Guidelines of 2014, this Authority is bound to rely and go ahead with the proposal filed by the port.

(viii). Market valuation for each category determined of land by the KPT is briefly discussed here under:

(a). Category A:
The land value of this category assessed by the approved valuer on "as and where basis" is ₹2060 per sq. mtr. The KPT has proposed market value of land at a higher level of ₹3942/- per sq. mtr. based on the recommendation of LVC by proportionately increasing the land value so as to maintain the ratio of land valuation between the two categories viz. A and B1 at the level approved in the last tariff Order. On seeking clarification from the port for such proportionate adjustments done by the KPT and to confirm that the market value proposed for Category A is relevant and representative enough in terms of layout, facilities, development, proximity, its commercial utilisation, etc., the KPT has clarified that the value of land for Category A during the last revision as on 1.1.2009 was ₹1840/- per sq. mtr. which was higher than the value of land

at ‘B1’ at ₹1490/- per sq. mtr. The KPT has confirmed that considering all relevant factors, LVC has recommended the market value of land at ₹3942 per sq. mtr. after proportionate adjustment (i.e. 1840/1490*3192). The recommendation of the LVC has been also approved by its Board. Users/ lessees have also not raised any pointed objection on this approach followed by the port. Hence, the market value of land as proposed by the KPT for this category is approved by this Authority.

(b). Sub-categories D1, D2, D3 under main Category D:
The valuation of land proposed by KPT for D1, D2 and D3 sub-categories are reportedly based on the highest valuation of land based on the auction rate received in the year 2011 and duly escalated by 2%. The land value for these sub-categories of land proposed by the KPT is based on the recommendation of the LVC and approved of the KPT Board and hence same is approved.

(c). Category E:
For this category, the market land value assessed by the approved valuer for “Land with Reclamation and with Infrastructure” has been considered at ₹5836/- per sq. mtr. It is seen that for all the other categories of land where the valuation of land as assessed by the approved valuer is proposed (except categories A, D1, D2, D3 and G), the KPT has relied upon valuation of the land given by the approved valuer on “as and where basis”. When sought specific reasons for considering the valuation of land based on “land with reclamation and with infrastructure” in respect of category “E” alone, the KPT has clarified that land in this area comes within the docks area and is developed by the KPT. Hence, market value of land is recommended based on valuation of land with reclamation and with infrastructure developed by KPT. It is appropriate that land value relevant for reclaimed land with infrastructure is applied for the land developed by KPT inside docks. Keeping in view that the land value for this category is based on the recommendation of the LVC and approved by the KPT Board, the same is approved.

(d). Sub-categories G1 and G2 under Category G:

(i). In respect of Category G1, the value of land proposed by the KPT is ₹15086.13 per sq. mtr. considering the highest rate received during auction of 2011 and after 2% escalation every year to arrive at the land valuation as on 1 January 2014.

(ii). In respect of Category G-2, the market value of land assessed by the approved valuer for land without reclamation and with infrastructure at ₹8170/- per sq. mtr. is proportionately scaled upwards with reference to valuation of land recommended by LVC for ‘G1’ category. (i.e. the market value of land for G1 recommended by LVC/ market value of G1 assessed by the approved valuer * market value of land for G2 assessed by the approved valuer = 15086.13/ 12375 * 8170). Accordingly, the market value of land for G2 proposed by KPT is ₹9,959.89 per sq. mtr.

(iii). As regards these sub-categories, it is relevant here to state that in the schedule of lease rents for Kandla lands approved by this Authority in the last Order of March 2011, the lease rent was approved for category G which reportedly covered lands of Liquid Storage Tanks situated at Old Kandla [between railway siding and leading to M/s. IFFCO and M/s. IOCL (LPG)]. In the current proposal, the KPT, based on the valuation report of the approved valuer, has proposed two sub categories G1 and G2 under the main category G relating to land for liquid storage tanks. Sub category G1 is for lands situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek and subcategory G2 lands pertaining to lands from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.

In this context as brought out earlier, the oil industry has raised objection that as per the proposed re-categorisation G into G1 and G2, the oil industry is impacted with steep hike of 592%. This is because until the year 2013, IOCL, BPCL and HPCL were being categorized under C1 (plots abutting the main road in the land beyond half a mile from the bank of the creek). However, as per current proposal they are categorised under the new category created for oil terminal i.e. G 2. For category C1, the lease rent approved by this Authority in the last tariff Order applicable from 1 January 2009 is ₹80.40 per sq. metre (lease rent on 31.12.2013 after applying applicable escalation factor is ₹87.02 per sq. metre i.e. 80.40*1.02*1.02*1.02*1.02). It is relevant here to state that the Reserve price in terms of annual lease rent proposed by the KPT applying 6% on the market value of land for category 'C' is ₹108 per sq. mtr. Whereas, the Reserve price in terms of annual lease rent for the new subcategory G2 for IOCL, BPCL and HPCL is ₹597.59 per sq. mtr. Hence, the impact of the proposed increase works out to 586% in comparison to the lease rent being paid under category 'C1' until 31 December 2013.

(iv). With reference to the objections raised by the oil industry for their recategorisation, the KPT has stated that as per Land Policy Guidelines 2014, the rates are to be fixed considering purpose also. But, no such provision linking rates to the purpose of the land to which in it is put to use appears to have been prescribed in the Land Policy Guidelines of 2014. However, the approach adopted by KPT to consider all the lessees, who have been allotted the land for 'Liquid Tanks' under G-2 category irrespective of distance is seen to be appropriate, as brought out below. The said categorisation of land is based on the valuation report given by the Government approved Land Valuer and that the land categorization is reportedly done in a scientific and methodical manner which has also been recommended by the LVC and approved by its Board. On perusing the land valuation report, it is seen that the land valuer has justified the reasons for categorising the land as G1 and G2. The main factors, amongst others, i.e. distance of land from jetty which impacts various factors are seen to have been considered in the valuation report. The Natki Creek is decided as the divider point between G1 and G2 category of land and a lower market value of land for G2 is assessed in comparison to value of land for G1. The market value of land for G1 and G2 considered by the LVC based on the various factors and recommended by the LVC is tabulated below for ease of reference though it is already brought out in earlier paragraphs bringing out the factual position:

(**₹ per sq. mtr.**)

Sr. No.	**Description**	**Market value of land for G1 category**	**Market value of land for G2 category**
(a).	State Govt. Ready Reckoner (No rate for Kandla Port Lands are available. These rates are of surrounding villages of Kidana, Mithirohar)	₹1050/- per sq. mtr.	₹1050/- per sq. mtr (*)
(b).	Highest rate of actual relevant transactions	No Transactions in last 3 years	No Transactions in last 3 years

(c).	Highest accepted tender-cum-auction rates for similar transactions received in the year 2011 for G1 category ₹14216 per sq. mtr. with 2% escalation per year (14216*1.02*1.02*1.02) = ₹15086.13 per sq. mtr.	15,086.13	Nil
(d).	Rate arrived by approved valuer appointed by the Board	₹12,375/-	8170/-
(e).	Any other factors: The Board vide Resolution no. 74 dated 16 July 2013 approved weighted average rate of ₹10,523.18 per sq. mtrs. with 2% escalations every year.	₹10,523/-	9959.89 (derived based on valuation of land recommended for G1) [i.e. 15086.13/ 12,375 * 8,170]
(f).	**Market value of land proposed by the KPT based on the recommendation of the LVC and approved by its Board in the current proposal**	**15,086.13**	**9959.89**

[(*) *Though the report or LVC and the proposal of the Port shows the valuation of land for G2 at 1050 per sq. mtr., it is seen that at page 81 of the valuation report for this category of land, valuation of land based on Jantri rates is arrived at ₹1581 per sq. mtr.]*

(v). It is relevant here to state that for category G2, the steep increase cited by the oil industry arises mainly on account of categorisation of land by the KPT from C1 to G2. GCCI has also stated that the categorisation of land is not scientific and methodological manner and it done arbitrarily by the KPT. In this context it is relevant here to state that Para 13 of the Land Policy Guidelines of 2014 requires the Major Port Trusts to have a land use plan for the entire land further requiring to review the land use plan atleast once in every five years. Para 14 of the land policy guidelines stipulates that land can be allotted on the basis of the approved land use plan/ zoning. Categorisation of the Port Trust Land and its allotments is prerogative of the concerned Port Trust and it does not fall under the domain of this Authority. The port has certified that Land leased (Category Wise) is as per Port Land Use Plan. This Authority does not have any mandate to categorize the lands of the Major Port Trusts which is solely under the domain of the concerned Major Port Trusts as per Land Policy Guidelines of 2014. The lease rental approved by this Authority for categories A to G during the last tariff Order of March 2011 was also completely based on the proposal of the Port Trust. The KPT has confirmed that the market value of the land proposed for G2 is a realistic value and is representative enough in terms of layout, facilities, development, proximity, its commercial utilization, etc.

Relying on the clarification furnished by KPT and recognising that the market value of land proposed for sub-categories G1 and G2 is based on the recommendation of the LVC and approved by the KPT Board and also in view of the clarification furnished by the KPT, explaining the basis for categorisation, this Authority relied on the decision of the KPT and approves the market value of land as proposed by the KPT.

(vi). As regards the weighted average rate of ₹10,523.18 per sq. mtr. with 2% escalation every year informed to the Ministry of

Shipping, the KPT has clarified that the current proposal filed by it for market value of ₹15086.13 per sq. mtr. will not in any way conflict with the land valuation reportedly communicated by the KPT to Ministry. This Authority relied on the position clarified by the KPT. By way of abundant caution, this Authority will like to advise the KPT to abide by the specific direction of the Supreme Court / Ministry, if any, on the related matter.

(e). Other categories/ sub categories

Apart from the categories/ subcategories of land viz. A, D1, D2, D3, E and G, discussed above, for the other sub categories of land viz. B1, B2, C1, C2, D4, D5, F1 and F2, under category B, C, D and F the KPT has proposed market value of land as recommended by the LVC based on the market value of land assessed by the Government approved valuer on "as and where basis".

As regards subcategory D4, a discrepancy was observed in the market valuation of land given in the valuation report by approved valuer for "as is where is basis" at ₹2131 per sq. mtr. vis-à-vis the valuation of land in minutes of the meeting of the LVC dated 23 April 2014 under this method at ₹2025 per sq. mtr. The KPT has clarified that the land valuation as given in the valuation report at ₹2131 per sq. mtr. is the correct value and has requested to consider the correct market value of land for D4 category at ₹2131 per sq. mtr. instead of ₹2025 per sq. mtr. mentioned in its proposal. The mismatch observed apparently seems to arise from some typographical error. Based on of the clarification furnished by the KPT, the correct market value of D4 land at ₹2131 per sq. mtr. is considered with consequent modification in the reserve price as well.

This Authority, therefore, approves the market value of land as proposed by the port for all the categories of land subject to correction in the market value of land for subcategory D4.

A comparative statement of market value of land based on the various factors furnished by the port, market value of land proposed by the port and the market value of land approved by this Authority is attached as **Annex - I**.

(ix). As already stated earlier, the proposal of the KPT seeks approval of the market value of land and the reserve price. Clause 18 (b) of the land policy guidelines stipulates that the percentage to be applied on the market value of land subject to a minimum cap of 6% is to be fixed by the Port Trust Board. As stated earlier, the Board of Trustees of the KPT has approved the market value of land as well as the reserve price in terms of annual lease rent applying 6% on the market value of land in its meetings dated 24 March 2014 (for subcategories G1 and G2) and 10 June 2014 (for other categories of land A to F). Since the proposal of the KPT, complies with the said provision stipulated in clause 18(b) of the land policy guidelines, and in view of statutory position to authorise the KPT to apply the lease rent, this Authority approves the market value of land and reserve price in terms of annual lease rent of the KPT as proposed by the KPT.

(x). Subject to above analysis, a comparative position of the market value of land considered by this Authority in the last tariff Order of March 2011 for arriving at lease rent as of 1 January 2009, lease rent approved as of 1 January 2009, escalated lease rental applicable as on 31 December 2013, the market value of land and the reserve price in terms of annual lease rent as on 1 January 2014 as proposed by the KPT and approved by this Authority along with impact of increase in terms of percentage is tabulated below:

(**in ₹ per sq. mtr.**)

Category	Description of Category	Market value of land and lease rent approved in the last tariff Order of 25 March 2011 and indexed lease rent as on 31.12.2013			Market value of land and Reserve Price in terms of annual lease rent proposed by KPT and approved by this Authority w.e.f. 01.01.14		Percentage increase over lease rent as on 31.12.2013
		Market value of land considered in the last tariff Order to arrive at lease rent	Lease Rent per Sq. Mtrs. per annum as on 1.1.2009	Indexed lease rent as on 31.12.2013 taking 2% escalation p.a. (***)	Market value of land	Reserve Price in terms of annual lease rent at 6% of the market value of land	
1	2	3	4	5	6	7	8
A	Land having water front and up to half mile from the shore i.e. the west bank of Kandla creek	1840	110.4	**119.50**	3942	236.5	97.91%
B	Land within half mile from the bank of the creek and having no water front						
B1	Plots abutting on main road	1490	89.4	**96.77**	3192	191.5	97.89%
B2	Plots situated on internal roads	1340	80.4	**87.03**	2873	172.4	98.09%
C	Land beyond half a mile from the bank of the creek			**0**			
C1	Plots abutting on main road	1340	80.4	**87.03**	1800	108	24.09%
C2	Other plots	1080	64.8	**70.14**	1500	90	28.31%
D	Land outside the bunder area and outside the west gate both on north as well as on the south of National Highway						
D1	Plots directly abutting on NH-8A	1670	100.2	**108.46**	3298	197.9	82.46%
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	1490	89.4	**96.77**	2153	129.2	33.51%
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	1420	85.2	**93.22**	3089	185.3	98.78%
D4	Plots abutting to KK road near zero point and railway crossing, 25 acres plot and other plots	-	-	-	2131	127.86	37.16%
D5	Valuation of land to west gate of NH8A towards salt works of land without reclamation but with infrastructure.	-	-	-	2565	153.9	65.09%
E	**Land within the docks**	3010	180.6	**195.49**	5836	350.2	79.14%
F	**Land west of railway siding leading to Kandla Free Trade Zone and up to crossing of railway line**						
F1	Plots situated on SEZ side from Kandla Railway Station	1670	100.2	**108.46**	3430	205.8	89.74%
F2	Plots situated on Ahmedabad side from Kandla Railway Station	1580	94.8	**102.61**	6720	403.2	292.44%
G	**Land of Liquid Storage Tanks situated at old kandla between Railway siding and leading to M/s. IFFCO and M/s. IOCO (LPG)-** (Description in last tariff order)	7380	442.8	**479.30**	Two sub-categories G1 and G2		
	Land of Liquid Storage Tank (Description in the current proposal)	-	-	-			
G-I	Land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek	No such sub-categories in the last Order.			15086	905.2	88.86% with reference to the rate of G of the last Order
G-II	Land from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.	No such sub-categories in the last Order.			9960	597.6	24.68% with reference to the rate of G of the last Order

(***) *The port has indexed the lease rent as on 1 January 2014. Since the original validity of the lease rent last approved by this Authority is valid till 31 December 2013, the indexed lease rent furnished by the KPT is suitably corrected and reflected as on 31 December 2013.*

From the above table, it is seen that except for category of land F2, the increase in the reserve price in terms of annual lease rent as on 1 January 2014 in comparison to the lease rent as on 31 December 2013 is in the range of 24.09% to 98.78%. For the land in category F2 the increase in reserve price in terms of lease rent as on 1 January 2014 works out to 292.44% in comparison to the lease rent as on 31 December 2013. The reason for steep increase in the lease rent in this category of land is not explained by the KPT. Incidentally, there has not been any pointed objection raised by any users/ lessees on the market value and reserve price proposed for this category of land.

(xi). At the joint hearing, Food Corporation of India (FCI) have made a request for prescription of separate concessional lease rent structure for Government organisations citing that land policy guidelines of 2014 allow allotment of land on concessional rate to Government organisation. The KPT has not proposed any concessional rate for FCI. With reference to the request of FCI, it is relevant to state that clause 16.2.(h) of the land policy guidelines of 2014, envisages concession in lease rent upto 50% to security agencies and government departments and upto 75% to government departments which are essential to the core functioning of the port like Customs, electricity department, health department and for core security functions with the approval of the Board of the concerned Port Trust. The Land Policy guidelines of 2014 does not prescribe any concessional lease rent to Government organisation involved in commercial activities. In any case, it is for Port Trust Board to decide whether the request of the FCI falls within the stipulation contained in the Land Policy Guidelines and on the quantum of concession to be allowed for reasons to be recorded in writing subject to the ceiling level prescribed therein.

(xii). As per clause 18(c) of the land policy guidelines of 2014, the Port Trust Board will fix a rate of annual escalation which should not be less that 2%. In the instant case, the Board of Trustees of the KPT vide its resolution dated 10 June 2014 while approving the market value of land and lease rent at 6% has also approved annual escalation of 2% with a provision to reset the annual escalation percentage after five years. In this context, the KPT has proposed a note under the schedule stating that the rates prescribed shall bear an escalation factor of 2% every year. Since the annual escalation rate of 2% is approved by the KPT Board as per the provision of the Land Policy guidelines of 2014, the note proposed by the KPT on annual escalation factor is prescribed in the schedule of rate structure for Kandla Lands with slight modification in the wordings. Since the KPT has sought approval of market value of land and reserve price in terms of annual lease rent, the proposed note is slightly modified to state that the reserve price in terms of annual lease rent shall bear an escalation factor of 2% every year.

(xiii). The KPT has not proposed any other conditionalities to govern application of Reserve price in terms of annual lease rent except the note proposed on annual escalation factor of 2%. When advised the port in this regard, the KPT has stated that even the earlier schedule of lease rent approved by this Authority does not contain any other conditionalities except for escalation clause. Since the KPT has not proposed any terms and conditions, a suitable note is incorporated stating that all terms and conditions governing the Market value of land/ Reserve price in terms of lease rent/ license fee shall be as per the land policy guidelines of 2014 issued by the Ministry of Shipping in the Government of India. A similar note is prescribed in the earlier rent schedule in KPT as well as in case of lease rent schedule of other Major Port Trusts referring to the applicable land policy guidelines in their respective cases.

(xiv). (a). The proposal of the KPT seeks approval of market value of land and reserve price in terms of annual lease rent with retrospective effect from 1 January 2014 for the quinquennium 1 January 2014 till 31 December 2018. There have not been any pointed objection from users in this regard as such during the current revision. As stated in the earlier paragraphs bringing out the factual position, various users/ lessees have filed SCA(s)/ Writ Petitions before the Hon'ble High Court of Gujarat mainly challenging the retrospective revision in the lease rents approved by this Authority vide its earlier Order dated 25 March 2011 which covered three quinquenniums viz. July 1999 to 31 December 2003, 1 January 2004 to 31 December 2008 and for the period 1 January 2009 till 31 December 2013. The Hon'ble High Court has not stayed the Order of this Authority dated 25 March 2011.

Significantly, Section 49 of the Major Port Trusts Act, 1963 calls for fixation of rates from time to time. It is admitted that ordinarily as per clause 3.2.8. of the 2005 guidelines, 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, as per Clause 8 of the 2005 guidelines, this Authority is bound by the Land Policy guidelines issued by the Government for arriving at the lease rental for Major Port Trusts land. This Authority in the last tariff Order approved on 25 March 2011 has prescribed the validity of the lease rent for five years. This Authority even while extending the lease rent of the Kandla Lands for the period beyond the expiry has made it clear that lease rentals to be fixed by this Authority for the KPT lands based on the proposal filed by the KPT will have retrospective effect from 1 January 2014. Thus, it cannot be denied that the position that the lease rentals for the lands of KPT will be reviewed after expiry of five years i.e. 1 January 2014 is in the knowledge of all the stakeholders.

The KPT was requested to confirm whether the lease agreements with the lessee/ licensees contain a clause allowing for retrospective revision of rental. The KPT has clarified that an undertaking is taken from lessees containing conditions allowing retrospective revision.

In view of the position brought out above, this Authority approves the proposal of the KPT seeking retrospective revision of market value of land and reserve price in terms of annual lease rent with effect from 1 January 2014 even though this Authority does not ordinarily resort to retrospective fixation of rates.

In fact, it is relevant here to mention that this approach is being followed not only in the case of the KPT but also in the other Major Port Trusts for which lease rent was approved by this Authority earlier under the then existing guidelines. 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 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. This Authority has recently vide Order No.TAMP/60/2012-NMPT dated 20 May 2014 in the case of NMPT accorded retrospective revision of lease rent based on the proposal of the port trust. With reference to revision of lease rent of V.O. Chidambaranar Port Trust approved by this Authority vide its Order No.TAMP/6/2012-VOCPT dated 4 April 2014, which is under litigation with regard to some issues including retrospective revision given to revised rates, the Hon'ble High Court of Madras has granted interim stay to the extent of retrospective revision of rates which is being challenged by the Authority.

(b). It is also made abundantly clear that the market value of land and reserve price in terms of annual lease rent for Kandla Lands approved by this Authority with retrospective effect from 1 January 2014 will be made applicable in case of the existing lessees / licensees subject to provision for periodic revision of rates agreed in the surviving lease agreements and in those cases of renewal/ allotment only if the respective lease agreement or letter of allotment, if no lease deed is still executed, explicitly provides for revision of lease rentals during the currency of the lease period.

(xv). The land policy guidelines of 2014 does not stipulate any provision relating to periodicity of revision of the lease rent of the Port Trusts lands. It is relevant here to mention that clause 6.3.(1)(d) of the Land Policy of the 2010, as well as clause 5.3(I)(d) of Land Policy guidelines of 2004 stipulate that the SOR will be revised every five years. It has to be recognised the market value of port lands under the various options prescribed under clause 18(a) of the Land Policy Guidelines of 2014 may undergo a change. In order to ensure that the lease rental/ license fee to be collected by Major Port Trusts under Land Policy guidelines of 2014 reflect the updated market value every five years, the MOS has been requested vide our letter dated 18 March 2014 to incorporate a provision prescribing revision of the Scale of Rates of port lands every five years in line with the prescription available in the Land Policy of 2004 as well as Land Policy Guidelines of 2010. Response of the MOS is awaited. When the above position was brought to the attention of the KPT, the port has proposed the cycle of proposed rate structure for Kandla Lands for the period of five years from 1 January 2014 to 31 December 2018, with approved escalation per year. That being so, a note is introduced in the schedule to state that the Market value/ Reserve Price shall be applicable with effect from 1 January 2014 till 31 December 2018 as proposed by the KPT.

12.1. In the result, and for the reasons given above, and based on collective application of mind, this Authority approves the schedule of Market value of land and Reserve Price in terms of lease rent for lease of Kandla lands belonging to the KPT attached as **Annex - II**.

12.2. The schedule of rate structure approved for Kandla lands will be effective from 1 January 2014 and will remain valid till 31 December 2018.

(T.S. Balasubramanian)
Member (Finance)

Annex - I

Comparative Statement of Market Value of Kandla lands as proposed by KPT and approved by the Authority

(₹ per sq. mtr.)

Category	Description of Category	Market Value of Land of Kandla lands							Market value of land as on 1.1.2014 Approved by the Authority
		Jantri Rate (Gujarat Government)	Transaction registered in last 3 years	Recent Auction Rates	Rates received from valuer as on 01.01.2014		Market Value of Land on 1.1.2014 recommended by Land Valuation Committee for arriving at lease rental		
					Land Without Reclamation & with Infrastructure for Land of Kandla	Land With Reclamation & with Infrastructure for Land of Kandla	As and where basis of Land situated at Kandla		
A	Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek	No Jantari Rate available for Kandla. However, the rate is 1050.00 m2 of nearby village for land for commercial purpose	No transaction since last three years	--	2575.00	3350.00	2060.00	3942.00	3942.00
B	**Land within half mile from the bank of the creek and having no water front**								
B1	Plots abutting on main road			--	3648.00	4560.00	3192.00	3192.00	3192.00
B2	Plots situated on internal roads			--	3283.00	4140.00	2873.00	2873.00	2873.00
C	**Land beyond half a mile from the bank of the creek**								
C1	Plots abutting on main road			--	2500.00	3520.00	1800.00	1800.00	1800.00
C2	Other plots			--	2200.00	3000.00	1500.00	1500.00	1500.00
D	**Land outside the bunder area and outside the west gate both on north as well as on the south of National Highway**								
D1	Plots directly abutting on NH-8A			3298.00 m2	Valuer has decided category in five parts as under: D1-2368 m2 D2-2131 m2 D3-2368 m2 D4-2250 m2 D5-2850 m2	Valuer has decided category in five parts as under: D1-3080 m2 D2-2770 m2 D3-3080 m2 D4-2925 m2 D5-3705 m2	Valuer has decided category in five parts as under: D1-2131 m2 D2-1920 m2 D3-2131 m2 D4-2025 m2 D5-2565 m2	3298.00	3298.00
D2	Plots abutting on 1st 30 meter road parallel to NH-8A			2153.00 m2			1920	2153.00	2153.00
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A			3089.00 m2			2131	3089.00	3089.00
D4	Plots abutting to KK Road near zero point and railway crossing						2025	2025.00	2131.00*
D5	Valuation of land to the west gate of NH-8Atowards salt works of land without reclamation but with reclamation						2565	2565.00	2565.00
E	**Land within the docks**			--	5336.00	5836.00	3080.00	5836.00	5836.00

F	**Land west of railway siding leading to Kandla Free Trade Zone and up to crossing of railway line**								
F1	Plots situated on SEZ side from Kandla Railway Station			--	3920.00	4900.00	3430.00	3430.00	3430.00
F2	Plots situated on Ahmedabad side from Kandla Railway Station			--	7680.00	9600.00	6720.00	6720.00	6720.00
G	**Land of Liquid Storage Tanks**								
G1	Land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek	1050	No transaction since last three years	14216	12375.00	14850.00	11138.00	15086.13	15086.13
G2	Land from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.	1050	No transaction since last three years	----`	8170.00	9804.00	7353.00	9959.89	9959.89

* The Market value of land D4 sub-category has been corrected to ₹2131 per sq. mtr. as pointed by KPT vide its letter dated 17.9.2014.

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Annex - II

Schedule of Market Value of land and reserve price for Kandla lands of Kandla Port Trust (KPT)

(₹ per sq. mtr.)

Sr. No.	Description of category	Market Value of land on 1.1.2014	Reserve price in terms of lease rent @ 6% of market value of land w.e.f. 1.1.2014
A	**Land having water front and upto half mile from the shore i.e. the west bank of Kandla creek**	3942.00	236.52
B	**Land within half mile from the bank of the creek and having no water front**		
B1	Plots abutting on main road	3192.00	191.52
B2	Plots situated on internal roads	2873.00	172.38
C	**Land beyond half a mile from the bank of the creek**		
C1	Plots abutting on main road	1800.00	108.00
C2	Other plots	1500.00	90.00
D	**Land outside the bunder area and outside the west gate both on north as well as on the south of National Highway**		
D1	Plots directly abutting on NH-8A	3298.00	197.88
D2	Plots abutting on 1st 30 meter road parallel to NH-8A	2153.00	129.18
D3	Plots abutting on 2nd 30 meter road parallel to NH-8A	3089.00	185.34
D4	Plots abutting to KK road near zero point and railway crossing, 25 acres plots and other plots	2131.00	127.86
D5	Valuation of land to the West Gate of NH-8A towards salt works of land without reclamation but with infrastructure	2565.00	153.90
E	**Land within the docks**	5836.00	350.16
F	**Land west of railway siding leading to Kandla Free Trade Zone and up to crossing of railway line**		
F1	Plots situated on SEZ side from Kandla Railway Station	3430.00	205.80
F2	Plots situated on Ahmedabad side from Kandla Railway Station	6720.00	403.20
G	**Land of Liquid Storage Tanks**		
G1	Land situated from Eastern Bank of Kandla Creek to Western Bank of Nakti Creek	15086.13	905.17
G2	Land from West side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, HPCL and BPCL.	9959.89	597.59

NOTE:

(i). The market value/ reserve price prescribed above will be effective from 1 January 2014 and remain valid till 31 December 2018.

(ii). The reserve price in terms of annual lease rent prescribed above shall bear an escalation factor of 2% every year.

(iii). The other conditions governing the lease rental / license fee shall be as per the Land Policy Guidelines of 2014 issued by the Ministry of Shipping, Government of India.

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

TAMP/24/2014-KPT	:	**Proposal received from Kandla Port Trust for revision of rate structure of Kandla lands at Kandla Port Trust.**

1. A summary of comments received from the users / user organisations and reply of KPT thereon is given below:

<table>
<tr><th>Sl. No.</th><th>Comments of users / user organizations</th><th>Reply of KPT</th></tr>
<tr><td>1.</td><td>Indian Oil Corporation Ltd. (IOCL)</td><td></td></tr>
<tr><td>(i).</td><td>It is inappropriate on part of KPT to arbitrarily increase the rental exorbitantly for plots of land occupied by IOCL at Kandla for installations and other purposes. IOCL vehemently opposes the unilateral decision of raising the lease rentals by KPT.</td><td rowspan="4">Following plots of land were allotted to M/s. IOCL on 30-year lease basis:
<table>
<tr><th>Name of lessee</th><th>Land Admg. (Sq. Mtrs.)</th><th>Lease Expired/ to be expired</th></tr>
<tr><td>M/s. IOCL</td><td>15602</td><td>30.11.2012</td></tr>
<tr><td></td><td>55050</td><td>14.02.2020</td></tr>
<tr><td></td><td>837</td><td>15.01.2025</td></tr>
<tr><td></td><td>468103</td><td>31.01.2018</td></tr>
<tr><td></td><td>91</td><td>10.07.2025</td></tr>
<tr><td></td><td>116774</td><td>21.08.2018</td></tr>
<tr><td></td><td>6589</td><td>14.06.2006</td></tr>
<tr><td></td><td>10430</td><td>20.10.2012</td></tr>
<tr><td></td><td>671052</td><td>03.12.2023</td></tr>
<tr><td></td><td>856</td><td>25.03.2006</td></tr>
<tr><td></td><td>86700</td><td>30.11.2012</td></tr>
</table>
So far as revision of rate is concerned, same has been clarified with reference to similar comments made by HPCL.</td></tr>
<tr><td>(ii).</td><td>IOCL is a Public Sector Oil Marketing Company engaged in the business of Refining, Distribution and Marketing of various petroleum products throughout the country.

IOCL continues to contribute in achieving the objectives enshrined in various enactments including the Essential Commodities Act, 1955, the Petroleum Act, 1934 and the Petroleum Rules, 2002 inter alia other rules and enactments. So, we contribute greatly to the objectives of the central as well as various state governments.</td></tr>
<tr><td>(iii).</td><td>IOCL activities will be incapable of being completed if it fails to move the Petroleum Products which are the nation's largesse through ocean tankers and pipelines to the onshore terminals which are by and large situated in the lands belonging to the port trust in various parts of the country. Hence, availability of land at economically/commercially feasible rentals to be levied by the Port Trusts and esteemed TAMP is our legitimate expectation in order to fulfill the nation's commitment to its citizens.</td></tr>
<tr><td>(iv).</td><td>Any exorbitant levy of rentals would adversely affect the financial strength of our Corporation significantly because our pricing is controlled by the Central Govt. in respect of products such as petrol, high speed diesel oil, liquefied petroleum gas etc. Hence to cope up with the increase in land rentals by the port authorities or the TAMP such exorbitant additional burden cannot be borne by IOCL by</td></tr>
</table>

<table>
<tr><td></td><td>means of fixing/levying higher prices from the consuming public. In other words, our Corporation is strictly precluded by the Central Govt. from acting on our own in product pricing in respect of the above mentioned products.</td><td rowspan="4"></td></tr>
<tr><td>(v).</td><td>IOCL’s survival is largely dependent upon due tariff and rental consideration by esteemed authorities like TAMP/Port Trusts. The TAMP/Port Trusts is under the aegis of the Central Govt. Similarly organizations like IOCL is also another organ of the very same Union Executive.</td></tr>
<tr><td>(vi).</td><td>It is pertinent to note that the subject land is situated in a faraway place and has various negative factors directly affecting the market value of the land. When the land was given on lease to IOCL, the subject lands were undeveloped and the IOCL had invested substantial amount for its development and on construction of the facilities. In respect of such undeveloped land, the increase now sought to be made is therefore wholly unjust.</td></tr>
<tr><td>(vii).</td><td>While IOCL sincerely register its protest against such exorbitant levy of rentals, however, as an extended arm of the Ministry of Petroleum and Natural Gas and in order to keep up the right spirit in conduct and for the purpose of hearing on the issues, IOCL would attend the hearing to be convened by TAMP. However, IOCL’s attending such hearing is without prejudice to Corporation's rights and contentions</td></tr>
<tr><td>2.</td><td>Hindustan Petroleum Corporation Ltd (HPCL).</td><td></td></tr>
<tr><td>(i).</td><td>HPCL is a Public Sector Oil Marketing Company. The majority of shares of HPCL is also held by the Central Government. For this reason HPCL is a Government Company under Section 617 of the Companies Act -1956. The accounts, functions and events of their Company are subject to audit by the Comptroller & Auditor General of India and also subject to scrutiny by Parliamentary proceedings.

HPCL is engaged in the business of Refining, Distribution and Marketing of various petroleum products throughout the country. HPCL continues to contribute in achieving the objectives enshrined in various enactments including the Essential Commodities Act, 1955, the Petroleum Act, 1934 and the Petroleum Rules, 2002 inter alia other rules and enactments. So, HPCL contribute greatly to the objectives of the central as well as various state</td><td>In connection, it is submitted that following five plots of land were allotted to M/s. HPCL on 30 year lease basis:
<table>
<tr><th>Name of lessee</th><th>Land Admg. (Sq. Mtrs.)</th><th>Lease Expired/ to be expired</th></tr>
<tr><td rowspan="5">M/s. HPCL</td><td>78370</td><td>29.02.2020</td></tr>
<tr><td>50799</td><td>21.04.2020</td></tr>
<tr><td>2786</td><td>31.07.2014</td></tr>
<tr><td>128618</td><td>31.10.2014</td></tr>
<tr><td>91567</td><td>30.11.2013</td></tr>
</table>

As per Order passed by the TAMP on 25 March 2011 notified in the Gazette of India Extraordinary on 11.5.2011 vide Gazette Notification No. 106, the TAMP had approved retrospective revision of rates in respect of Kandla Lands from July 1999 in three consecutive slabs i.e. from July 1999 to 31.12.2003, from 1.1.2004 to 31.12.2008 and from 1.1.2009 to 31.12.2013. The lease rentals</td></tr>
</table>

	governments.	bear an escalation @5% (compoundable) per annum for the period July 1999 to 24.2.2004 and @2% thereafter. The KPT had issued demand note for annual lease rent as per the rate approved by TAMP under the category `C1' from 2012 onwards. M/s. HPCL has made the payment as per revised rate. However, they have not made payment of differential bills issued by KPT as per the above order from 1999 to 2011 and approached the Court vide SCA No.16530/2013 before the Hon'ble High Court of Judicature at Gujarat, Ahemdabad which is still pending. A committee was constituted for fixing market value of land and Schedule of Rates as per Clause 16.2 (e) of Land Policy Guidelines 2014 issued by Govt. of India. The committee was headed by the Dy. Chairman of the Port. The other members were the Heads of Departments of Finance, Estate and Traffic. An approved land valuer was appointed as per Clause 18 (a)(iv) of Land Policy Guidelines for assessing the market value of the Kandla lands. The Committee after going through various aspects and considering the parameters provided under Clause 18(a)(i) to (v) of Land Policy Guidelines, 2014 had recommended the market value of the Kandla Land. Since the rate recommended and approved by the Board as per the Govt. guidelines and there is no any provisions for relaxation to Public Sector Oil Marketing Company, the request made by HPCL cannot be acceded to.
(ii).	HPCL has reiterated the points made by IOCL at (iii) and (iv) above.	
(iii).	HPCL is undertaking and carrying out duties and responsibilities towards sub serving the common good and as an organization is a class by itself or *sui generis* in status. Therefore, it is their earnest desire that TAMP would appreciate that its survival is largely dependent upon due tariff and rental consideration by esteemed authorities like TAMP/Port Trust. The TAMP/Port Trusts being under the control of the Central Govt. as organs of the Union Executive. Similarly organizations like HPCL is also another organ of the very same Union Executive. In view of this status of their organization being identical as that of TAMP, it is their legitimate expectation that imposition of exorbitant rental as is contained in the various KPT demand notes would be rightfully reviewed by the Authority and accordingly it will be called back.	
(iv).	The HPCL have filed a Writ Petition being SCA No 16530/2013 before the Hon'ble High Court of Judicature at Gujarat, Ahmedabad wherein HPCL has agitated against the unilateral exorbitant demand of ₹80.40/- from the prevailing ₹11/- per sqm of land made by KPT from 2009, and, also on charging of differential rental & interest thereon with retrospective effect from 1993 by unilaterally devising and demanding certain increase in rental on periodical basis thereafter. The Writ Petition has been filed due to the disproportionality in demand that too without giving any opportunity of hearing extended to us by KPT defeating the principles of natural justice.	
(v).	While the averments and contentions of HPCL are *sub judice* in the said Writ Petition being SCA No. 16530/2013, however, as an extended arm of the Ministry of Petroleum and Natural Gas and in order to keep up the right spirit in conduct and for the purpose of hearing on the issues, HPCL would attend the hearing to be convened by the Authority. However, HPCL's attending such hearing is without prejudice to the Corporation's rights and contentions subsisting in the Writ Petition 16530/2014 in which esteemed Authority is also a respondent.	
(vi).	In the meantime, HPCL has reiterated its prayer and plea for kind intervention to waive the demand of the exorbitant rental sought for by KPT in their various demand	

	notes for amount ranging from ₹80.40/- to ₹87.03/- plus service tax.	
3.	**Gandhidham Chamber of Commerce & Industry (GCCI).**	
	The mainstay for the port has to be revenue generation - not from land but from the traffic / port operations. The port has to thrive on even increasing traffic of cargo at the port and this can be ensured only by means of proper utilization of the land for development of port related activity, which should be priced reasonably and modestly to be conducive to the increase in traffic on ongoing basis. If lease rentals based on the proposed prices are fixed at such high pitch, obviously the port activities will become unviable and port will start losing the traffic to other ports. The reduction in revenue will result in increasing SOR, which will be detrimental to the interest of port and its users. The high earnings from traffic augmentation should be the aim rather than indulgence in land matters.	Contentions furnished by GCCI para 1 to 3 are not right. A committee was constituted for fixing market value of land / Schedule of Rates as per clause of 16.2 (e) of Land Policy Guidelines 2014 issued by the Government of India. The committee was headed by the Deputy Chairman of the port. The other members were the Head of Departments of Finance, Estate and Traffic. An approved land valuer was appointed as per clause of 18 (iv) of the Land Policy Guidelines for assessing the market value of the landed estate. The committee after going through various aspects and considering the parameters provided under clause no. 18(a) (i) to (v) of the Land Policy Guidelines 2014 had recommended the market value of the Kandla land. The proposal for revision of the rate structure of Kandla land of KPT has been submitted to TAMP as per the clause no. 16.2 (d) and 18 (c) Land Policy Guidelines, 2014 which is reproduced as under: 16.2 (d) Land shall be leased thorough tender-cum-auction methodology through a competitive bidding process over the reserve price of such plots which shall be worked out by the Land Allotment Committee of the Port and approved by the Port Trust Board and by TAMP. 18(c) The Port Trust would make a proposal as outlined in para 18(a) to TAMP for fixing the market value of the land. The TAMP would notify the market value of the land after following due process of consultation with
(i).	TAMP has no jurisdiction to fix the lease rent for letting of port Trust lands outside the port limits, as primarily TAMP is concerned with tariff rates concerning port operations.	
(ii).	TAMP is not a quasi-judicial Authority and as such the rates fixed/approved by it are not binding on port trusts/Kandla Port Trust tenants/lessees outside port limits.	
(iii).	TAMP has no powers or jurisdiction to frame the scale of Rates and/or rents of premises belonging to Kandla Port Trust and situated outside the port limits. It is worth mentioning here that the Board of Trustees for Mumbai Port has filed a Writ Petition bearing No. 1153 of 2000 V/S TAMP and others, challenging the right of TAMP in respect of (i) and (ii) above. Hon'ble Mumbai High Court has granted a stay in the matter and hence TAMP does not fix/approve lease rents of lettings on tenancy/lease basis for lettings outside port limits, which are under the jurisdiction of the Estate Manager, Mumbai Port Trusts. TAMP has so far not been able to get this stay vacated.	

		stakeholders within 45 days of receipt of the proposal. The Port Trust Board will fix a rate of annual escalation which would not be less than 2%.
(iv).	Charging of 6% return on full market rates as per valuation report of the Valuer appointed by Kandla Port Trust is not correct/in order on account of following reasons :- (a). The valuation is done for vacant lands and not in respect of occupied/let out lands of Kandla Port Trust. Valuation for freehold transfer of ownership of land cannot be applied to letting of lands, which are particularly governed by the provisions of the public premises vis-a-vis other freehold plots transaction instances. (b). When market rents based on valuation reports of consultant were imposed in Mumbai Port Trust, Writ Petitions were filed under Article 226 of The Constitution of India. Complaining that Mumbai Port Trust (Then Bombay Port Trust-BPT) being an instrumentality of the state within the meaning of Article 12 of the Constitution, it was bound to be fair in its dealing with lessees. So exorbitant rents cannot be charged by KPT also. The learned Single Judge (S.M. Daved) vide his judgment dtd. 4.10.1990 struck down the revision of rents based on Kirloskar Consultant's valuation report. (c). When Bombay Port Trust preferred appeal in Mumbai High Court, the matter was finally adjudicated by the Hon. Supreme Court by its order dtd. 13.01.2004 which also did not approve of charging market rents by the Bombay Port Trust from 1982. Bombay Port Trust had to frame "Compromise Proposal" for fixation of rents much lesser than market rents. This was in civil Appeal Nos. 5559, 5361, 5582... CAN No. 209/2004, SLP(c) 19877/2001 Appellants Jamshed Hormusji Wadia vs/. Board of Trustees of Port of Mumbai and another. The Supreme Court Judgement dtd. 13.04.2004 was by Justice R.C.Lahoti & Brijesh Kumar.	
(v).	M/s.K.M.Thacker & Associates (to whom Kandla Port Trust has appointed as valuers) are not professionally qualified nor experienced in carrying out the valuation of gigantic and huge chunk of land.	
(vi).	The users have not been given any opportunity of being heard, while deciding	

	the valuation.	
(vii).	The land is allotted to the users at relevant time with renewal clauses and after the approval of land use Policy – 2004, there is no provision of assessment of land valuer or there is no provision of arriving at market rate.	
(viii).	Kandla Port trust cannot go beyond the Land Policy Guidelines, 2014.	
(ix).	No permission for fixing the land valuation for revision of rates was sought from the Government of India to whom the land belongs.	
(x).	The Land valuer has suggested fixation of lease rentals on highest value, which is incorrect. The similar formula for fixation of market rate and its rental cannot be made applicable to all the sides of land.	
(xi).	The Board of Trustees for Kandla Port vide Resolution No.74 dated 16.07.2013, while approving land value for tanks had fixed the rate of ₹10523.18 per sq.mtr. plus with 2% escalation every year. In the present proposal, Kandla Port Trust has suggested escalation rate @ 5% which is abnormally high.	
(xii).	While suggesting the revision of rates, Kandla Port Trust has not considered and compared the rates prevalent at other major ports of the country like Mumbai, Visakhapatnam, Cochin etc. The rates of Kandla land should be much lesser than the rates fixed for above ports.	
(xiii).	For calculation purposes, the word "Highest" needs to be removed.	
(xiv).	The local Jantri rates for the land owned by Government of Gujarat for similar purposes are much less than the proposal submitted by Kandla Port Trust to TAMP.	
(xv).	If the rates proposed by Kandla Port Trust are approved by Hon'ble Authority, the same will lead to great disparity, discrimination as also resulting in various anomalies. GCCI as a representative body of all users oppose the unmindful, arbitrary and very high revision without basis of very high revision and the same requires to be scrapped and ordered to be returned for reconsideration and reappreciation.	
(xvi).	The proposed increase in tariff with port related activities within port limits and outside the port limits will lead to great financial losses to the users.	
(xvii).	Categorisation is not done in scientific and methodological manner. The plot of land where the hazardous and non-hazardous chemicals are stored, need to be categorized properly, as it appears from the classification that this aspect is not taken into consideration for the valuers.	

	(Reference Page No.27l28 of valuers' Report)	
(xviii).	The Port Trust while fixing the lease rental for G-1 category, which has been fixed at ₹905/- per sq.mtr. per annum with an escalation clause of 2% p.a. has given no regard to the distance from the water front between different parcel of land coming under the said category viz. G-1. In the past, while fixing the rates for any land, due regard has been given to the distance from the Port area and water front and as such there used to be different sub-categories. The location of the plot from the Port area would make a vital difference in the viability of the establishment thereupon and as such need to be reckoned while fixing the reserve price. Fixing only one rate for all G-1 category land upto almost 5 kms. distance from water front would not be appropriate since in case of a plot nearby port area it would have an edge over a plot farther from port area because of its getting more quicker discharge rate and also low cost on transportation and lower turnaround time etc.	
(xix).	Besides the above factor, the cost of developing a plot of say 1 or 2 lacs sq. mtr. would be far greater than that of a plot smaller in size.	
(xx).	Similarly, while inviting bids for warehouse land in respect of 25 acres of land hosted on the website recently, the reserve price for this type of land has been fixed as ₹121.50 per sq.mtr. p.a. regardless of distance from the port area. It is requested to give due weightage to this aspect while deciding on the rates for land under this category (warehousing). In addition, in the past also there were sub-categories in respect of such land depending on the size of the plot. To illustrate, in case of a small parcel of land, there would be so many buyers and developers as compared to a parcel of land which is much greater in area. It is suggested that while fixing the reserve price for any category of plots, be it land for warehouse, salt land or land for tank terminals, due consideration of the distance from the water front or port area has to be made and the size of the plot also needs to be considered.	
(xxi).	GCCI is of the considered view that the proposal of Kandla Port Trust for revision of rate structure for Kandla land of Kandla Port Trust does not merit consideration in light of the above facts and therefore the same may kindly be returned	

<table>
<tr><td></td><td>unconsidered.</td><td></td></tr>
<tr><td>4.</td><td>Indian Farmers Fertilizer Cooperative Limited (IFFCO)</td><td></td></tr>
<tr><td>(i).</td><td>The rates proposed are arbitrary, exorbitant, unjustified and against public interest.</td><td rowspan="3">In this connection, it is submitted that following three plots of land allotted to M/s. IFFCO on 30 year lease basis are as under:

<table>
<tr><th>Name of Lessee</th><th>Land Admg. (Sq.Mtrs.)</th><th>Lease Expired/to be expired</th></tr>
<tr><td rowspan="3">M/s. IFFCO</td><td>256091</td><td>30.06.2001</td></tr>
<tr><td>35961</td><td>18.04.2008</td></tr>
<tr><td>413509</td><td>07.03.2008</td></tr>
</table>
The rates proposed are as per provision provided in Land Policy Guidelines, 2014.

<u>Reply vide letter dated 17 September 2014</u>
IFFCO has filed SCA No. 2607/12 and 673/2014 which are still pending in the Hon'ble High Court of Gujarat. The writ petition cannot be considered as comments to the recent proposal of revision of rate structure of Kandla Land.

Oral Order dated 22/03/2013 was pronounced by Hon'ble High Court of Gujarat at Ahmedabad in SCA No. 2607 of 2012 filed by IFFCO v/s Union of India and others. Main Para of said order is re- produced as under:-

Rule. However, the interim relief is required to be granted subject to the condition that he petitioner shall pay and continue to pay at least on the basis of the rate fixed in respect of the Category “B" without prejudice to the rights and contentions of the parties. It is also clarified that it is only as and by way of interim arrangement till the issues are decided by the Court, or appropriate decision is taken by the authority, i.e. Tariff Authority for Major Port, depending upon the classification. It will not be Treated as having created any right or precedent in favour of the Petitioner in any manner and the Petitioner shall not claim any benefit on the basis of the order, which is passed only as and by way of interim measure.

Accordingly, M/s. IFFCO has made payment of compensation bill as per the above rate of B category.

Earlier, M/s. IFFCO has made same submission to TAMP while approving the rate from 1999</td></tr>
<tr><td>(ii).</td><td>IFFCO has stated that in response to letter no. TAMP/21/2010-KPT dated 29 April 2010, it had offered comments vide letter dated 25 August 2010 and has furnished the copy of the same.</td></tr>
<tr><td>(iii).</td><td>Since IFFCO requests were not considered during last revision and the rates were revised exorbitantly and unjust, IFFCO has filed a Special Civil Application (SCA) No. 2607 of 2012 and 673 of 2014 in the Hon’ble High Court of Gujarat for certain reliefs related to revision of rate structure and categorization of land allotted to IFFCO. These petitions are pending. IFFCO has requested that the submissions in these petitions may be considered as comments in response to the instant proposal.</td></tr>
</table>

		vide letter No. 25-06-2010 and reply already given to TAMP and request made by IFFCO were not considered. The request made by M/s. IFFCO cannot be considered for reasons mentioned as under:- (i). Para-16.3 (d) of Land Policy Guidelines-2014 which provides that in respect of lease agreements with automatic renewal option, the lease can be renewed by the Port Trust Board by treating it as a fresh lease at the updated/ latest market value, notified as per Para 18(c). Hence, above revision is applicable to M/s. IFFCO also. (ii). The request made by M/s. IFFCO that the rates may be revised as (a) @1% per annum of the market value of land for industries, and (b) lease rental @3% per annum of the market value of land for commercial cannot be acceded as per para 18(b) Land Policy Guidelines – 2014 as under: "The Land Allotment Committee shall, while recommending the latest Market Value for any land would normally take into account the highest of the factors mentioned in Para 18 (a) above. Reserve Price In terms of the annual lease rent would be considered as a percentage of the latest market value determined in accordance with Para 18(a) above, and would in no case be less than 6% of the latest market value, to be fixed by the Port Trust Board." (iii). The Board vide Resolution No. 147 dated 02-04-2001 has approved the rate of ₹16/- provisionally based on the undertaking submitted by the M/s. IFFCO vide its letter No. KP/WEL/LAND/6/2000 dated 22/05/2000 as under. "I/We, hereby undertake that in case the lease is renewed by Kandla Port Trust after receiving approval of the Central Government, the annual ground rent at the provisional rate of ₹16/- per Sq. mtrs. or part thereof, subject to the approval of the Government shall be paid by us to Kandla Port Trust. We shall pay the final rate of annual ground rent as may be fixed by the Government. In case I/We fail to pay the final revised rate of ground rent within 30 days from the date of intimation, the Port Trust is at liberty to take over the possession of the said land. Also we agree to abide by the revised terms and conditions prescribed by KPT.

	Grounds on which both the petitions are filed by IFFCO are brought out in a summarized manner. Such summarized position is not forwarded by IFFCO in the current proposal:	So far as SCA No. 2607/12 & 673/14 is concerned, the same is related to rate structure approved and notified by TAMP in 2011, which is still pending in the Hon'ble Court of Gujarat. The writ petition cannot be considered as comments to the recent proposal of revision of rate structure of Kandla land.
(a).	**Grounds for filing SCA No. 2607 of 2012:**	
(i).	Reluctance on the part of the Central Govt. to exercise its powers as per the provisions of Section 54 of Major Port Trusts Act.	
(ii).	No opportunity was given to the land users to put forward/explain their position/version.	
(iii).	Unilateral and unfair categorisation of the lands on which the Petitioner's plant is situated.	
(iv).	KPT has been arm twisting the Petitioner by abusing their authority and dominance as they are taking undertaking from Petitioner by threatening eviction, delaying process of finalisation of rates, non-renewal of leases, obstructing construction work, charging compensation on false grounds of unauthorized occupation and withholding payments due to the Petitioner.	
(v).	Renewal of leases which was due on 1 July 2001 has been deliberately delayed by the Respondents.	
(vi).	Application of same parameters/basis and rates on which renewal of existing long term perpetual leases and on fresh leases is arbitrary. Clause 5.1 and 5.2 of Land Policy Guidelines differentiates between fresh allotment and renewal of existing leases.	
(b).	**Grounds for filing SCA No. 673 of 2014:**	
(i).	**Right of renewal:**	
	(a).KPT has deprived the petitioner of its contractual right to renew the lease as per the agreement dated 25.09.1971.	
	(b).There has been inordinate delay on the part of respondents in renewing the lease periods, though the petitioner has been proactive and repeatedly requested for renewal much prior to the end of the earlier lease period.	
(ii).	**Bills of Compensation:**	
	(a).In the absence of an explicit or implicit rejection of lease renewal KPT is accepting the lease rent paid by the petitioner. Therefore, KPT has no right to raise bill of compensation for the alleged unauthorised use and to recover rates applicable currently as per the prevailing Scale of Rates.	
	(b).Notwithstanding above, the KPT cannot deem the petitioners as unauthorised occupants.	

(iii).	**Land Policy:**	
	(a).The application for renewal of lease, which was made by the petitioner in the year 2000 cannot be made subject to the new land policy that has come into force in 2011 solely for the reason that the approval by the govt. had not been granted.	
	(b). Land Policy 2010 is bad, arbitrary and illegal as it gives flexibility to respondents to base scale of rates on factors that would prejudice lease holder by not reflecting many factors that ought to be considered.	
	(c). As the lease is in continuation and in renewal of the earlier lease, the revised rate for the new period should have been kept as per the earlier terms and formula and that the base rate must be taken as the last rate of ₹1.35 per sq.mtr.	
	(d). Land policy is not in the public interest.	
(iv).	**Valuation of Land:**	
	(a).TAMP order states that KPT have stated that the Land value as per the state government's ready reckoner (Jantri rates) has not been considered because such rates are on a very lower side. Therefore, KPT has selected the rates arbitrarily.	
	(b).The overall methodology adopted by the valuer for determining the annual lease rents and taking up bidding rates of 2005 as sole basis in exclusion of all other relevant factors and allowing discount is arbitrary and unrealistic.	
(v).	**Arbitrariness of Scale of Rates and its application to the petitioner:**	
	(a).The revised rates approved by TAMP vide order dated 25.03.2011 are high and excessive and therefore, malafide, arbitrary, unjust and unreasonable.	
	(b). the revised rates are highly disproportionate to the last lease rent charged till June 2001.	
	(c).The analogy of the respondents in applying the existing commercial rates based on the latest tendered rates obtained through bids for small chunks of land cannot be supported and applied to the renewal of existing leases of the petitioner under which the land was given on lease way back in the year 1971 and developed by the petitioner.	
(vi).	**Moral grounds:**	
	(i).There is lack of fairness and equality in conduct of the respondents.	
(c).	**Prayers made in SCA No. 673 of 2014:**	
(i).	To issue a writ or in the nature of mandamus or any other writ, order or direction requiring the respondents to retrospectively renew the lease agreement	

	dated 25.09.1971 pursuant to the application dated 16.02.2000 annexed to the present petition at the rates prevalent at the relevant time.	
(ii).	To hold or declare that the impugned Communication of Bills of Compensation dated 01.11.2013 raising an unreasonable demand at such exorbitant rates without any basis is bad and illegal in the eye of law.	
(iii).	To quash and set aside the Scale of Rates dated 25.03.2011 as being based on factors that ought not to be considered.	
(iv).	To quash and set aside the Land Policy 2010 to the extent that it grants an ambiguous and unfettered power to the Respondents to base the Scale of Rates on any of the criterion specified therein.	
(v).	To order that the determination of the Market value of the said lands should be done again, and should be based on all the factors which are available, and the rates that may be high or low, all of them may be considered.	
(vi).	To stay operation and implementation of the bills of compensation and restrain the respondents from taking any coercive measures in respect of the unfettered occupation of the lands by the petitioner.	

2. A joint hearing in this case was held on 4 August 2014 at the KPT premises. The KPT made a power point presentation of its proposal. At the joint hearing, KPT and the concerned users/ organisation bodies have made the following submissions:

<u>Kandla Port Trust (KPT)</u>

(i). We received Valuation Report for A to G categories of land from the approved valuer.

(ii). Land Policy Guidelines clearly says highest of the five factors prescribed in the guidelines is to be considered by the Land Allotment Committee for arriving at the latest market value of land.

(iii). Land Valuation Committee (LVC) has examined all the factors and recommended Reserve Price/ Market Value based on highest of five factors of Land Policy Guidelines.

(iv). For categories ‘A’ and ‘G2’, highest valuation of land under “any other factor” is recommended.

(v). For categories ‘B’, ‘C’, ‘D4’, ‘D5’, ‘E’ & ‘F’, the LVC has recommended land value arrived by Approved Valuer being the Highest Factor. However, for category ‘E’ i.e., land within Docks, the Committee has recommended market value of Land with reclamation and with infrastructure.

(vi). For category ‘D1’, ‘D2’, ‘D3’ & ‘G1’, “Highest Auction Rate” is the highest value of land. The same has been recommended by the Committee.

(viii). Valuer has arrived at valuation of lands allotted for tank farms based on rental method. Our auction rates are, however, higher than the valuation given by the approved valuer.

Gandhidham Chamber of Commerce and Industry (GCCI)

(i). Land valuer has taken valuation of land of adjoining areas. So, we object the market value of land derived by the valuer. All parameters are not considered. Market value of land should be representative enough.

(ii). Land value is available in acre basis. Valuer has, however, converted land value from acre into metre basis. Actual value of land will only be 50% if valuation is done on acre basis and after considering roads, etc.

(iii). Oil industries are instrumental in the port. Their rates have been revised by 592% which is steep. Kandla does not have space to store liquid terminal. Hence, reasonable increase should only be allowed.

(iv). The Judgment of the Supreme Court in Order dated 13 January 2014 in Jamshed Hormusji Wadia versus Board of Trustees of Mumbai Port Trust states that settled position of law is that the State and its authorities are instrumentalities of the State and have to be just, fair and reasonable in all their activities.

(v). Development should not be hampered in Kandla Port by fixing lease rent based on highest factors.

(vi). Kandla has vast area of land. Only 1200 acres of land is developed. Land should be used optimally.

(vii). Many private ports are developing under Gujarat Maritime Board (GMB). They received land at cheap price. Land is given by GMB at ₹1 per sq. mtr. Lease rent should be competitive to the adjoining ports. Kindly ensure reasonable rates are fixed.

(viii). We do not question the valuation report. Stakeholders should, however, have been involved for finalisation of the valuer and the system to be adopted by valuer. Our suggestion was not considered.

[KPT (Gehani): For selection of approved valuer, we have gone by tender route and have taken approved valuer who is reputed one. The valuer has considered all factors. Valuer has considered Jantri rates as given by State Government Reckoner.]

(ix). Most of lessees are port users. Port's intention should not be only to collect high lease rentals.

(x). Valuation of land based on recent transactions at 20 kms. away from the port lands may not be relevant.

(xi). Considering land valuation for freehold land and applying it for leasehold land may not be appropriate. If we have to convert leasehold land to freehold, we have to pay premium.

CRL Terminal now Vopak Terminal Kandla

(i). The Authority may determine lease rental in a fair and just manner and not in arbitrary manner.

(ii). Current proposal, if approved, by TAMP will have profound impact mainly on oil industry. It may lead to bankruptcy in various business operations. Consequently, the port's business will decline in comparison to other neighbouring ports.

(iii). Lease rent last approved by TAMP lead to 5 to 10 times increase over the pre-revised lease rent. No auction could materialise at the lease last approved by the Authority. In three years' time the KPT has filed another proposal and increase sought is around 900%.

(iv). Lease rent proposed is like in Singapore. But the development/ facilities are not comparable.

Bharat Petroleum Corporation Ltd. (BPCL)

(i). Adjoining private port (i.e. Mundra Port) which provides more facilities is charging ₹36/ sq. mtr.

(ii). Lease rent applicable to us prior to last revision at KPT was ₹11 per sq. mtr. which was increased to ₹88 per sq. mtr. in last Order. Now the lease is proposed to be increased to around ₹600/ sq. mtr.

[KPT (Gehani): Lease rents are arrived based on highest auction received in 2011 for G1 category. Land Valuation Committee has decided to recommend rate on this basis for the 2 categories G1 and G2.]

[Member (TAMP): TAMP and KPT are guided by Government guidelines for land valuation.]

(iii). Upto 2013, we were categorised under C1. From January 2014, we have been shifted to new category G2 and rate is ₹600/ sq. mtr. There is no change in physical parameters but still KPT has changed our category from C1 to G2. Hence, impact is very high and unreasonable.

(iv). As far as Jantri rate, it comes to around ₹1000/ sq. mtr. But, port has taken land valuation based on certain transaction which is 20 kms. away which is not realistic and the rate is coming very high.

Hindustan Petroleum Corporation Ltd. (HPCL)

(i). We should have been given opportunity to decide the valuer and the methodology for arriving at the land valuation.

(ii). We don't approve the proposal. Hike in lease rents must be reasonable.

(iii). KPT as instrumentality of the State should act in a reasonable and fair manner as per the judgement of the Supreme Court in Jamshed Hormusji Wadia versus Board of Trustees, Port of Mumbai.

Indian Farmers Fertilizer Cooperative Limited (IFFCO)

(i). We have represented our views vide our letter dated 25 July 2014.

(ii). Rates proposed are arbitrary, unjust and unfair. It is exorbitant.

(iii). We have filed a Writ Petition in the Hon'ble High Court of Gujarat challenging the earlier Order of TAMP.

(iv). Our points in the Writ Petition may be taken as our comments.

Kandla Port Karmachari Sangh (KPKS)

(i). The Ministry of Shipping has released Maritime agenda for 2020. Ports around Kandla port are like Major Ports. TAMP should, therefore, keep in view that non-major ports are coming up.

(ii). The KPT lands are underutilized. We do not say that the KPT has suffered loss due to non-allotment of land. Land is there with Kandla Port but not allowed to be used.

(iii). Board of Trustees of KPT has resolved the proposal. We support the proposal.

[Member (TAMP): Land Policy Guidelines allows to recommend land value based on the highest value of land on five factors. If highest valuation of land is not considered, the Land Policy Guidelines allows to give reasons therefor. Port should examine the views of concerned users and, if necessary, review and file a revised proposal].

Food Corporation of India

(i). Existing rates are high. Proposed rate are even higher.

(ii). There should be separate rate structure for Government organisations. Guidelines allow allotment of land on concessional rate to Government organisation. Allow us such concessional rates as we are Government organisation.

[Member (TAMP): Land Policy Guidelines allows concessional lease rent for Government organisations whose functions are essential to port and not for commercial purposes.]

(iii). Board Resolution passed states if the approval is lower, no refund will be given. This is not fair.

(iv). Since the last Order of TAMP revising lease rental is subjudice, no bill should be raised till the case is decided.

3. With reference to point of action decided at the joint hearing, the KPT vide its letter dated Nil September 2014 has furnished its comments on the written submissions made by BPCL, HPCL, GCCI, IFFCO and KPKS. Subsequent to joint hearing, KPKS vide its letter dated 19 August 2014 has given further submissions. Since the comments furnished by KPT are jointly on both letters of KPKS, they are brought out together. A summary of the written submissions made by users and reply furnished by KPT thereon is tabulated below:

<table>
<tr><th>Sl. No.</th><th>Written submissions of users in joint hearing</th><th>Reply of KPT</th></tr>
<tr><td>1.</td><td>Bharat Petroleum Corporation Ltd.</td><td></td></tr>
<tr><td>(i).</td><td>The petitioners, commonly called Oil Marketing Companies (OMCs) are public sector undertaking, we deal with petroleum products such as Motor Spirit commonly known as Petrol (MS), High Speed Diesel (HSD) commonly</td><td>In this connection, it is submitted that the following two plots of land were allotted to M/s. BPCL on 30-years lease basis:-<table><tr><th>Name of Lesse</th><th>Land Admg (Sq. Mtrs.)</th><th>Lease Expired/ to be expired</th></tr></table></td></tr>
</table>

<table>
<tr>
<td></td>
<td>known as Diesel, SKO commonly known as Kerosene LPG etc. which are classified as essential commodities under the Essential Commodities Act.</td>
<td rowspan="5">
<table>
<tr><td>M/s. Bharat Petroleum Corporation Ltd.,</td><td>263107
4441</td><td>31-July-13
31-July-13</td></tr>
</table>
In this connection KPT issued demand note for annual lease rent as per the rate approved by TAMP under the category “C1” from 2012 onwards. HPCL has made the payment as per the revised rate. However, they have not made payment of differential bills issued by KPT as per the above order from 1999 to 2011 amounting ₹ 27,45,00,625/-.
The category has now been shifted as “G 2” from 01.01.2014 as per the valuation report submitted by the valuer appointed for valuation of Kandla Land rates for tanks terminals approved by the Board vide BR. No. 203 dated 24.03.2014 as proposed by the LAC and Valuation Report submitted by the valuer appointed for valuation of Kandla Land.
The contention of the party that the report seems to be made on the directions of KPT is baseless and far from the truth. The land Valuer appointed as per the clause No. 18(v) Land Policy Guidelines 2014 and M/s. K.M. Thacker & Associated, Land Valuer appointed through E-Tender after the fulfilling the criteria fixed by Tender Allotment Committee.
</td>
</tr>
<tr>
<td>(ii).</td>
<td>The petitioners have set ups at Kandla Port Trust (KPT), leased land for receipt, storage and distribution of Petroleum Products. OMCs since occupying the site are paying the rentals as per the TAMP rate which are revised time to time by the KPT. Last revision of TAMP rate has been made in the Year 2011.</td>
</tr>
<tr>
<td>(iii).</td>
<td>KPT has proposed revision of the rate from ₹ 85.32 per sq.ft. to ₹ 597.58 per sq.ft. Which is almost equivalent to 700% increase in the lease rental. This is an abnormal high increase in the rentals.</td>
</tr>
<tr>
<td>(iv).</td>
<td>As per TAMP Notification dtd. 6 May 2011, the Oil Companies were falling under "Cl - Category i.e Lands situated beyond half a mile from the bank of the Creek and abutting on the main road". In the current proposal, the land classification for Oil Company's has been changed from Cl to a new category called G-2 i.e. Land from West Side of Nakti Creek to Kharirohar having existing Oil Terminals of IOCL, BPCL and HPCL. The Valuer has not understood the existing classification of "G Category" and has expanded the scope of G category and has further bi-furcated it into G1 and G2 category. There is a contradiction in the definition of all the categories i.e. G, G1 an G2 which casts serious doubts on the valuation methodology and the credentials of the Valuer. Change of category from Cl to G2 for Oil Companies is not justified from any angle as no additional or any new facility has been provided to the petitioners.</td>
</tr>
<tr>
<td>(v).</td>
<td>KPT has proposed the lease rentals to TAMP on the basis of the Land Valuation report dated 28.03.2014 made by M/s K.M Thacker & Associates. The report seems to be made on the directions of KPT. The report only justifies the rates already fixed by KPT in its meeting dtd. 24.03.2014. The report has no legal basis and has been made on some imaginary grounds away from facts. The valuer appointed by the KPT is not competent or experienced to carry out the valuation of such a large piece of land. The valuer has carried</td>
</tr>
</table>

	out the valuation without following the proper and fair procedure. The valuation has been made in a clandestine manner without consulting the petitioners nor the valuer has ever called the petitioner for their comments or for any hearing opportunity to the petitioners before finalization of the report which is against the set principles of natural justice as the petitioner is the most affected party by the said valuation report. Valuation report at page 42 under reference has mentioned specific reference from one of the petitioner M/s IOC, which has never been submitted by the petitioner. Further the valuation of land cannot be carried out so easily as is done by the present valuer as there was no physical transaction in either so called "G1 & G2" categories. The report is based on irrelevant considerations and facts, which have no bearing or relation with the present land. The land transactions mentioned in the valuation report have no correlation with existing land. The valuation shown by the valuer is exorbitantly high, without any legal basis and evidence or any set standard for measuring valuation of land. The most important factors like the local Jantri rates has not been considered by the valuer in his report, As the per the local Jantri, even the land owned by the Govt of Gujarat for similar purposes are ₹900/- for Mithirohar and ₹1000/- for Kidana.	
(vi).	The Valuer has used three options for arriving at the fair market price of the land situated in G-2 Category.	
	Option – 1 On the basis of Govt. of Gujarat guideline rates, rate arrived at is ₹ 1581 per sq.mtr which has also been calculated factoring 30% as solution charges and 5% as Stamp Duty charges which is not applicable.	
	Option-2 On the basis of the highest rate at which Govt. Of Gujarat allotted land is calculated as Rs. 5040 per sq.mtr. The land transactions used as reference for arriving at the rates pertain to Shinai, Kidana, Bharapur Villages which are nowhere in proximity to our existing lands and are Approx. 10-12 KMS away from our premises.	

	Further, while arriving at the price, Solution Charges (30%), Stamp Duty Charges (5%) and Reclamation Charges (20%) have been added which are not applicable.	
	Option-3 On the basis of Annual letting value rate has been calculated as ₹ 8170 per sq.mtr. The Valuer has used the Lease Rent of 442.80 as the base rate for "G Category" as per TAMP Notification for 2009 and accordingly worked out the current rentals considering an increment of 2% per anum. The "G Classification" is clearly described as "Land of Liquid Storage Tanks situated at Old Kandla between Rail Siding and leading to M/s IFFCO and M/s IOCL ltd".	
	None of the Oil Marketing Company (OMCs) Terminals fall under these categories. Hence, the very basis of calculation is wrong.	
(vii).	The rate fixed under the Gazette Notification no.106 dated 11.05.2011 has also been challenged by HPCL in Writ Petition no. SCA 16530/2013 before the Hon'ble High Court of Gujarat at Ahmadabad and the matter is under consideration before the court. In view of that, when even the existing rates are under challenge, fixation of new rate is not justified.	
(viii).	The Petitioners are Public Sector Undertakings and as mentioned in the para supra they are dealing in Petroleum and allied product classified essential commodities under the essential commodities Act. The prices of the product are fixed by the Government and the petitioners are bound by the price fixed by the Government. Fixation of higher rate shall adversely affect the product price which will add to the losses of the petitioners as the petitioner cannot pass the product to the ultimate consumers. The same result in increase in subsidy burden on the Government exchequer and adversely affect the national interest.	
(ix).	The KPT or TAMP are State under Art.12 of the constitution of India and are expected to act in just, fair, reasonable and transparent manner. The unilateral fixation of rate is an arbitrary and unjustified action, which cannot withstand the tests set by the Hon'ble Supreme court of India for Writ petition under Article 226 of constitution of India.	

<table>
<tr><td>(x).</td><td>KPT has provided the OMCs with barren and marshy land. Subsequently, the petitioners had developed infrastructure facility for operation at the land by incurring huge cost. The land value which reflects today is the efforts and huge cost put up by the petitioners.</td><td rowspan="4"></td></tr>
<tr><td>(xi).</td><td>The Mission of KPT is to be the most economical Modern Major Port of India. One of the key objectives of the KPT is to rendering cost effective services to their Customers and to render value for money and value added services to their customers. Proposal to fix rate at such a high level is against the basic mission and key objectives of the KPT.</td></tr>
<tr><td>(xii).</td><td>Viewed from any angle, the fixation of rate at such high rate is arbitrary, capricious, unfair and not acceptable to the petitioner. It is requested that the proposal be reviewed and rate be set by following fair procedure, in consultation with the petitioner.</td></tr>
<tr><td>(xiii).</td><td>As the petitioners have not been provided sufficient time to submit their representation, we are only submitting an interim representation. The petitioner may please be given further time to submit details representation and further time be given for personal hearing in the matter.</td></tr>
<tr><td>2.</td><td>Hindustan Petroleum Corporation Limited</td><td></td></tr>
<tr><td></td><td>HPCL has filed Special Civil Application Number 16530/2013 before Hon'ble High Court of Gujarat challenging the exorbitant, arbitrary and unreasonable increase of rentals by Kandla Port trust. It is a matter of fact that no reply whatsoever has been filed by Kandla Port Trust to the said Special Civil Application. As such while reserving all our rights in said Civil Application we are submitting our points and contentions as under-</td><td>In this connection, it is submitted that M/s. Hindustan Petroleum Corporation vide their dated 04-08-2014 expressed their views regarding revision of rate, formation and objective of HPCL and comparison with Mundra Adani Port.

In this connection, it has already been submitted that following five plots of land allotted to M/s. HPCL on 30-year lease basis are as under:-

<table>
<tr><th>Name of Lessee</th><th>Land Admg. (Sq. Mtrs.)</th><th>Lease Expired/ to be expired</th></tr>
<tr><td rowspan="5">M/s. Hindustan Petroleum Corporation Ltd.,</td><td>78370</td><td>29-Feb-20</td></tr>
<tr><td>50799</td><td>21-Apr-20</td></tr>
<tr><td>2786</td><td>31-Jul-14</td></tr>
<tr><td>128618</td><td>31-Oct-14</td></tr>
<tr><td>91567</td><td>30-Nov-13</td></tr>
</table>

As per the Order passed by the TAMP on 25th March, 2011 and notified in the Gazette of India Extraordinary (Part III Section 4) on 11-5-2011 vide Gazette Notification No. 106, the TAMP had approved the retrospective revision of rates in respect of Kandla Land from July-1999 in three consecutive slabs i.e., from July-1999 to 31-12-2003, from 01-01-2004 to 31-12-2008 and from</td></tr>
</table>

		01-01-2009 to 31-12-2013 and the lease rentals shall bear an escalation @5% (compoundable) per annum for the period-July 1999 To 24-02-2004 and @2%. Kandla Port Trust issued demand note for annual lease rent as per the rate approved by TAMP under the category "C1" from 2012 onwards. M/s/ HPCL has made the payment as per the revised rate. However, they have not made payment of differential bills issued by KPT as per the above order from 1999 to 2011 and approached the Court vide SCA No. 16530/2013 before the Hon'ble High Court of Judicature at Gujarat, Ahmedabad which is still pending. A Committee was constituted for fixing market value of land and Schedule of Rates as per clause of 16.2(e) of Land Policy Guidelines 2014 issued by Government of India. The committee was headed by the Deputy Chairman of the Port. The other members were the Heads of Departments of Finance, Estate and Traffic. An approved land valuer was appointed as per clause of 18(iv) of the Land Policy Guidelines for assessing the market value of the landed estate. The Committee after going through various aspects and considering the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines-2014 has recommended the market value of the Kandla land.
(i) (a)	HPCL is marketing, inter alia, highly subsidized essential commodities like diesel, LPG, kerosene etc. As such, HPCL is working for larger public Good & Serving the Nation.	Port Trusts follow the Govt. Guidelines issued by time to time. The above revision has been made as per the Land Policy Guidelines -2014 issued by Ministry of Shipping and there is no provision for relaxation of lease rental to Oil companies.
(b).	In the matter of *Jamshed Hormusji Wadia Vs Board 0/ Trustees, Hon'ble Supreme Court 0f India passed order dated 13.1.2004* interalia stating - The position of law is settled that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. In HPCL opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State cannot be seen to be indulging in rack-renting, profiteering	The HPCL has furnished the reference of some Judgment. In this connection, it is submitted that KPT has not received any subsequent Guidelines/clarification from Ministry of Shipping and TAMP in connection with the above judgment. It is already clarified that the rate has been revised following the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines-2014 issued by Ministry of Shipping. Land Valuation Committee (LVC) recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014 taking into account the highest of the factor mentioned in the above policy to determine the latest market value of port land as per the categories as suggested by the Land Valuer vide minutes of the Committee meeting held on 10.03.2014 and 23.04.2014.

<table>
<tr><td></td><td>and indulging in whimsical or unreasonable evictions or bargains. Copy of the said Judgment is attached</td><td rowspan="3"></td></tr>
<tr><td>(c).</td><td>In the matter of Dwarkadas Maratlal Vs Board of trustees of Bombay Port trust, the Hon'ble Supreme Court of India passed order dated 27.4.1989 inter alia holding -
Port Trust being a public body, even in respect of its dealing with its tenants, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction.
The Port Trust is statutorily exempted from the operation of the Rent Act on the basis of its public/Governmental character. Every action/activity of the Bombay Port Trust which constituted "State" within Article 12 of the Constitution in respect of any right conferred or privilege granted by any statute is subject to Article 14 and must be reasonable and taken only upon lawful and relevant grounds of public interest. Copy of the said Judgment is attached.</td></tr>
<tr><td>(d).</td><td>On account of above settled legal position framed by Hon'ble Supreme Court is as under - Port trust is a 'State' under Article 12 of the Constitution.
Port trust being a state is supposed to act in public interest and do public good. Port trust being a state is supposed to act in a reasonable and fair manner. Port trust cannot indulge in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains.</td></tr>
<tr><td>(ii)</td><td>Mundra Adani port is a 'State of the art Port' situated around 65Kms from the Kandla Port on the western coast. Vide lease deed dated 9.1.2008, the Mundra Adani Port granted lease of land to HPCL at a rentals of ₹25 Per Sq Mtr in 2004. As per the escalation provided in said agreement the rentals for the year 2013-2014 is ₹36 per Sq Mtrs (Approx excluding service tax). Copy of the latest demand Note for rentals is attached.

A comparison of major facilities provided by Mundra Adani Port vis-a-vis facilities provided at Kandla are as follows –

<table>
<tr><th>Sr. No.</th><th>Major Facilities at Mundra Adani port</th><th>Whether available at Kandla Port</th></tr>
<tr><td>1.</td><td>Leased land approximately 10 kms situated near to the water front.</td><td>Lease land situated almost 12 kms from water front.</td></tr>
<tr><td>2.</td><td>On arrival berthing of</td><td>No, tidal Port.</td></tr>
</table></td><td>It is already clarified that the rate has been revised as parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines-2014 issued by Ministry of Shipping.</td></tr>
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<tr><td></td><td>vessels, all weather port.</td><td></td></tr>
<tr><td>3.</td><td>Simultaneous berthing of more than one vessel containing different grades.</td><td>No.</td></tr>
<tr><td>4.</td><td>24” line 4 hoses for HSD giving more than 1600KL flow rate.</td><td>No.</td></tr>
<tr><td>5.</td><td>16” line and 3 hoses for Ms giving more than 1000KL flow rate.</td><td>No.</td></tr>
<tr><td>6.</td><td>Supply of fresh water for vessel directly at Jetty</td><td>No.</td></tr>
<tr><td>7.</td><td>Hose connection and disconnection carried out in minimum time as possible by the port itself.</td><td>Considerable time taken for Hose connection which is done by HPCL as Tenants.</td></tr>
<tr><td>8.</td><td>Flyovers with excellent Road infrastructure provided for ease of transportation.</td><td>Poor road condition with railway crossing causing Hindrance in Transportation.</td></tr>
<tr><td>9.</td><td>Supply of water to Terminal through dedicated pipeline (Narmada Water)</td><td>No such water supply. HPCL made its own arrangement for water.</td></tr>
<tr><td>10.</td><td>Excellent Security cover and Infrastructure with latest technology.</td><td>No</td></tr>
</table>

Considering the above judgment and findings given by the Hon'ble Supreme Court of India and also considering that Mundra Port as a private port with lot of important additional facilities is charging ₹ 36 per sq mtrs, as such KPT being a government body and State under Article 12 of the constitution is entitled to receive only reasonable rentals which should be much much lower than Mundra Adani Port or at best be similar to Mundra Adani Port.
</td>
<td></td>
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<tr>
<td>(iii).</td>
<td>Through various leases/allotment letters vacant barren/uneven plots of land were leased to HPCL. The entire filling/leveling was done by HPCL. The initial rental of 12 Annas i.e. ₹ 0.75 was being charged in 1953 which was hiked from time to time and now being proposed to be ₹597. In total contrast to same there has been no worthwhile development of the area by KPT during said period of more than 60 years.</td>
<td rowspan="2">The contention of M/s. HPCL is right that earlier rate charged was ₹0.75 in 1953. Now, the rate has been revised /enhanced / refixed at the option of the lessor at the end of every 5 year as per the Govt. Guidelines issued from time to time. Accordingly, KPT acted and followed the above Guidelines.</td>
</tr>
<tr>
<td>(iv).</td>
<td>HPCL states that it is a matter of records and an undisputed fact that on account of HPCL's presence and occupation and usage of the premises the Kandla Port Trust is earning huge amount by way of cargo handling through vessel berthing at jetty.

HPCL is one of the oldest Allotee of the Plots and may be the first Public Sector Undertaking to be granted leasehold lands by the Trust.</td>
</tr>
</table>

<table>
<tr><td>(v).</td><td>ANOMALIES AND UNREASONABLENES IN FIXATION OF RENTALS-</td><td></td></tr>
<tr><td>(a).</td><td>RENTALS AS PER LEASE DEED/TAMP ORDER DATED 25.3.2011:

The rentals demanded are much above what is prescribed under the Lease Deed. As per the lease deed and considering even 5% escalation the revised rentals comes to ₹ 35.5 and considering 2% escalation as prescribed by TAMP vide order dated 25.3.2011 the revised rentals comes to ₹ 32.51.</td><td>There were about 5 lands allotted to above party, of which 2 leases have already expired. Since party has not executed lease deed, all Rules and Regulations made by the Board of Trustees of Port of Kandla, under the provisions of the Major Port Trust Act, 1963 with the approval of the Central Government with regard to the use and enjoyment of the demised premises, shall be deemed to be part of the lease deed and binding on the lessee.</td></tr>
<tr><td>(b).</td><td>ARBITRARY CHANGE OF CATEGORY:

Prior to the deriving revised lease rentals by land allotment committee in 2014, HPCL/IOCL/BPCL (oil terminal) were falling under the Land category of C1 till 2013, however, in current proposal a new category is developed for oil terminal i.e G 2. Such re-categorization is done without any scientific approach or logic. That rates fixed by KPT in July 2013 for category C land is ₹108 per SQM per year and just by changing the category from C to G, KPT/TAMP has revised the rates to ₹597.59. Such action is totally unreasonable, unjustified & arbitrary.
No additional facilities have been provided nor is any development carried out in 2014. As such change of category from C 1 to G -2 is unreasonable, unjustified & arbitrary.</td><td rowspan="2">As per the Land Policy Guidelines, 2014, the Land Allotment Committee shall, while recommending the latest Market Value for any land normally take into account the highest of the factors mentioned in Para 18 (a) of the Land Policy Guidelines. Reserve Price in terms of the annual lease rent would be considered as a percentage of the latest market value determined in accordance with Para 18(a), and would in no case be less than 6% of the latest market value, to be fixed by the Port Trust Board.

The rate has been revised as per the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines-2014 based on the recommended market value of the Kandla land. Land Valuation Committee recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014 taking into account the highest of the factor mentioned in the above policy to determine the latest market value of port land as per the categories as suggested by the Land Valuer vide minutes of the Committee meeting held on 10.03.2014 and 23.04.2914.

The Board of Trustees of the port of Kandla vide Board Resolutions (BR) No. 203 dated 24.03.2014 & B.R. No. 236 dated 10.06.2014 had approved the proposal for revision of rate structure of Kandla Land fixing of Reserve price/market value for lease rentals for Kandla Lands for the Categories “A” to “G”.

The Land Valuer is appointed as per the clause no. 18 (v) of Land Policy Guidelines-2014 through E-Tendering process.

M/s. K. M. Thacker & Associates, a Govt. Approved Land Valuer has mentioned in the valuation report that land categorization is done in a scientific and methodical manner & it is also approved by Land Valuation Committee and the KPT Board.</td></tr>
<tr><td>(c).</td><td>COMPARISON OF G1 AND G2:
That while fixing the rates in G category, the land has been categorized broadly under two heads i.e. G 1 & G 2. The land leased to Hindustan Petroleum Corporation Limited is falling under G 2 category. A comparative analysis of facilities given for lands falling under G 1 & G 2 category.
<table>
<tr><th>Sr. No.</th><th>Facility</th><th>G-1</th><th>G-2</th></tr>
<tr><td>1.</td><td>Proximity from Port</td><td>Within 2 Kms. Hence, receiving product from vessel thru pipelines are convenient due to lesser distance from port.</td><td>12 Kms. As a result receiving pipeline input form jetty is difficult & time consuming and costly.</td></tr>
<tr><td>2.</td><td>Accessibility through Road</td><td>Accessibility by road from Gandhidham is better than G2, as there is single railway crossing with little rail movement</td><td>Accessibility from Gandhidham is still a very critical issue because there are two railway level crossing in between with frequent rail traffic and no fly overs.</td></tr>
<tr><td>3.</td><td>Water Supply</td><td>Available</td><td>No water supply</td></tr>
<tr><td>4.</td><td>Surrounding</td><td>Excellent condition, majority</td><td>Mostly salt panes & Vacant lands</td></tr>
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<tr><td></td><td></td><td>companies situated nearby.</td><td></td></tr>
<tr><td>5.</td><td>Development</td><td>Well developed basic infrastructure, good logistic network.</td><td>Lack of basic amenities, non-availability of street lights etc.</td></tr>
<tr><td>6.</td><td>Rentals in 2013/ Proposed Rentals 2014</td><td>442.80/905.17 (2.4 times increase)</td><td>87/597
(7 times increase)
The comparative increase itself confirms the unreasonableness & discriminatory attitude towards OMC's.</td></tr>
</table>
</td>
<td rowspan="2">In accordance with Para 18(b) of the Land Policy Guidelines, lease rent would in no case be less than 6% of the latest market value, to be fixed by the Port Trust Board.</td>
</tr>
<tr>
<td>(d).</td>
<td>MAJOR ANOMALIES IN VALUATION METHODS:
As per the valuation report and part of the report of Land Allotment Committee, there are three methods of land valuation. Comments/objections to all methods of valuation are as follows -

FIRST METHOD – In his method the guideline value of land is taken which is around ₹ 1000. Thereafter 30% have been levied as solution charges and 5% have been levied as stamp duty charges. Thereafter final value is arrived as ₹1581/-. Firstly, the method by taking land value as base for rental calculation is not correct as land under guideline value of Mundra Port Land is higher than Kandla Port land, however, Mundra port is charging rental of ₹36/- as compared to ₹597/- now proposed by Land Allotment Committee. Secondly, there is no justification/legal basis for levying 30% as solution charges, no development is done by Kandla Port, and even entire leveling/filling of land is done by HPCL.

SECOND METHOD - In this method the value of land allotted by Gujarat Government for certain lands is taken as base, however, as a matter of fact the said plots are far away from land allotted to HPCL. Further Solution charges (30%), Reclamation charges (20%), and development charges (10%) have been levied. As a matter of fact, no development or any reclamation is done by Kandla port trust in respect of land leased to HPCL.

THIRD METHOD- In this method, the value of rent approved by TAMP in 2013 for G category i.e 442.80/- is taken as base. It is vital to point out that said base rate was applicable to G category in 2013 and at that point of time HPCL was in C1 category. In fact, in 2013 the rental</td>
</tr>
</table>

	demand to HPCL as part of C 1 category was ₹87/- approx.	
(e).	Fixing of 6% rental on full market rates as per the Valuation Report obtained by Kandla Port Trust is not correct. Valuation is done in respect of vacant lands and not in respect of occupied / leased lands of Kandla Port Trust.	The KPT has not furnished any comment on this point.
(f).	The Valuer appointed by the Kandla Port Trust, namely M/S K M Thacker & Associates, are not adequately qualified or experienced to carry out valuation of huge chunks of land.	Thought the KPT has not furnished its reply to this comment here, it has furnished its reply to similar observations made by GCCI.
(g).	The users were not given any opportunity of being heard while deciding the Valuation.	The KPT has not furnished any comment on this point.
(h).	Tariff Authority for major Ports vide order dated 25.2.2011 along with the Board of trustees for Kandla Port had approved an annual escalation of 2% in rentals vide Resolution dated 17.07.2013. The Kandla Port Trust has suggested an annual escalation of 5%, which is abnormally high, unreasonable and Arbitrary.	The KPT has not furnished any comment on this point.
(i).	The local Jantri rates for the land owned by the Government of Gujarat for similar purposes are much less than the proposal submitted by the Kandla Port Trust to TAMP	
(j).	The proposed increase in rates will cause great financial losses to the users.	
(k).	The land categorization is not done in a scientific and methodical manner.	M/s. K. M. Thacker & Associates, a Govt. Approved Land Valuer has mentioned in the valuation report that land categorization is done in a scientific and methodical manner & it is also approved by Land Valuation Committee and the KPT Board.
(l).	The cost of developing a plot is directly proportional to its size, a factor which has not been considered while finalizing the revised rates of rent.	
(m).	If Percentage of land value is taken, then annual rentals should not exceed 2% of the land value as the return on investment on land is calculated by 2 methods - One is rentals that it may fetch and second is the value by which it appreciates. In the case of land, the value appreciation is very high and hence rentals should be very low. Comparatively, for a building, which has got a particular life only, the value increases but not as much as land and hence the rental returns are a slightly higher percentage.	The KPT has not furnished any comments.
(v).	**ORDER OF MUMBAI HIGH COURT** - The Board of Trustees for Mumbai Port filed a Writ Petition bearing No. 1153 of 2000 vs TAMP & others, challenging the right of TAMP to frame the lease rent of Port Trust lands outside the port limits. In the said Writ Petition it was	It is already clarified that Rate has been revised as per the Govt. Guidelines, So far as order of Mumbai High Court is concerned, it is pertaining to TAMP.

	contented that TAMP is primarily concerned with Tariff Rates related to port operations and has no jurisdiction to fix the lease rent of Port Trust lands outside the port limits. TAMP is not a quasi- judicial authority and hence the rates fixed/approved by it are not binding on Port Trusts / Kandla Port Trust tenants / lessees outside port limits. TAMP has no powers or jurisdiction to frame the Scale of Rates and / or rents of premises belonging to Kandla Port Trust and situated outside the port limits. The proposed revision of rents by land allotment Committee for land belonging to the Kandla Port Trust does not merit consideration and hence should be returned unconsidered.	
3.	**Gandhidham Chamber of Commerce & Industry**	
(i).	Any administrative Authority or instrument of the State is governed by provisions, rules, regulations policies and guidelines applicable to it and are bound to act strictly under the same. Wherever a discretion has been granted to an administrative authority, such discretion is to be exercised without any arbitrariness or unreasonableness on part of the administrative Authority or its delegate.	It is mentioned that KPT has to follow the Land Policy Guidelines 2014 issued by Government of India.
(ii).	In the given instance the TAMP, the KPT and the Land Allotment Committee (LAC) are governed by the Policy Guidelines for Land Management by Major Ports, 2014 (Policy Guidelines) and are thus bound by the provisions thereof. A challenge to the actions of the TAMP, KPT and the LAC would thus lie only if their actions are contrary to the provisions of the Policy Guidelines or that they have exercised the discretion vested in them arbitrarily or unreasonably.	
(iii).	That apart, Courts in their writ jurisdiction do not review the decision made by an Authority but review only the decision making process.	
(iv).	The point thus to be urged is that in the present case the LAC and the KPT have, in so far as the market value of land /reserve price is concerned, have acted contrary to Clause 18 (a) of the Policy Guidelines and have improperly exercised the discretion under Clause 18 (a) arbitrarily and unreasonably and thus	An approved land valuer was appointed as per clause of 18(iv) of the Land Policy Guidelines of 2014, for assessing the market value of the landed estate. The committee after going through various aspects and considering the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines -2014 had recommended the market value of the Kandla land. Land Valuation Committee recommended the

	the decision making process is arbitrary and unreasonable.	rate as per Clause No. 18 (a), (b) & (c) of Land Policy Guidelines 2014 taking into account the highest of the factor mentioned in the above policy to determine the latest market value of port land as per the categories as suggested by the Land Valuer vide minute of the Committee meeting held on 10.03.2014 and 23.04.2014. The Board of Trustees of the port of Kandla vide BR No. 203 dated 24.03.2014 & BR No. 236 dated 10.06.2014 had approved the proposal for revision of rate structure of Kandla Land fixing of Reserve price/market value for lease rentals for Kandla Land and for the Category "A" to "G".
(v).	A perusal of the minutes of the LAC meetings and the KPT proposal seem to suggest severe discrepancies in their conduct and assist in reinforcing the aforesaid. The inconsistent and discrepant conduct is set out hereunder:	
(a).	As per clause 18 (a) of the Policy Guidelines it is incumbent upon the LAC to take into account the highest of the factors mentioned therein. The said clause also grants the LAC the discretion to choose the factor not being the highest thereunder, in such an event the LAC is obligated to record the reasons for exercise of such discretion in writing.	
(b).	A perusal of the minutes of the meeting of the LAC dated 10 March 2014 (1st Minutes) indicates that in respect of Category G-I, the highest factor that the LAC has opted for is under Clause 18 (a) (iii) which amounts to ₹14,216.00. Whereas, in respect of Category G - II, the LAC has exercised its discretion by opting for the highest factor as per Clause 18 (a) (v), This factor is represented by the formula i.e. Rate of the G-I category / Rate arrived by the valuer for G- I x Rate arrived by the valuer for G-II. Curiously, in this formula employed by the LAC to calculate the rate they have incorrectly used ₹15086.13/- as the rate for G-I category instead of ₹ 4216/-. This is a glaring inconsistency in the two tables of the same minutes.	The KPT has already clarified the points regarding issue regarding land valuation of Category G-1 and G-2 vide its letter No. LW/PL/3302/1159 dated 14.08.2014. [Apart from this, the KPT has not furnished its comments on other points made by GCCI.]
(c).	Further, the LAC has not provided any source, reasoning or basis for resorting to the said formula, needless to state questions may be raised in respect of the credibility and validity of the formula.	
(d).	The LAC, thereafter held a second meeting on 24 April 2014 (2nd Minutes). As per the 2nd Minutes the rate as per the highest factor i.e. clause 18(a) (iii) is ₹15086.13. This rate is inconsistent with the highest factor as per clause 18 (a)(iii) recorded in the 1st Minutes i.e. ₹14216/- for G-I. Please, however, note that the applicable rate for G-I category that is recorded in the 2nd Minutes (while inconsistent with its reference in the first Minutes to G-I) matches its reference in the formula for arriving at the rate under clause 18 (a)(v) for	

	category G-II. Questions ought to be raised in respect of these inconsistencies in rates.	
(e).	While the minutes referred to above make it explicit that the LAC has relied upon Clauses 18 (a) (iii) and (v) for categories G-I and G-II respectively, the KPT in its proposal to the TAMP has recorded that the LAC has in its meeting on 23 April 2014 decided to recommend rates and categories as suggested by the land valuer. This is a factor contemplated under 18 (a) (iv) and does not find a mention in either the 1st or 2nd minutes. Questions certainly ought to be raised in respect of this inconsistency as well.	No comments furnished by KPT.
(vi).	It is understood that only developed land is considered for hike.in lease rentals. The Kandla Port Trust is in possession of large chunk of undeveloped land also, which is lying vacant at present. This aspect is also to be considered before arriving at any final decision.	No comments furnished by KPT.
(vii).	16% Return on investment is on exceptionally high side and needs to be moderated in port lands if taken in consideration.	No comments furnished by KPT.
(viii).	The rate structure for Kandla land should be compared with the surrounding land owned by Government of Gujarat also. The jantri rates are much lower. Assessment is required that how many plots of land has been sold yet after last revision.	No comments furnished by KPT.
(ix).	The port trusts were formed by the Govt. of India to facilitate the import /export of the cargoes /goods through the sea route which is the cheapest in terms of freight cost internationally. This port trusts are the governing body of the ports and not the corporate company whose main motto is to run the profitable organization. Main aim of the ports is to encourage the import/export to boost the economy of the entire nation in general by way of providing the cost effective services to the importer/ exporter on which economy of the countries are largely depends and	No comments furnished by KPT.

	ultimately result in to economic health of the nation. Hence, in nut shell main motto of the port is to boost the economy. It is further informed that even if the port is to look for additional revenue generation that has to be from traffic/port operations which are being carried out at the port and not from the land. It is always suggested that the available land with the port has to be utilized /developed in planned manner so that the consistent traffic growth can be achieved which can be the main source of the revenue generation and not from lease rentals of the land.	
(x).	The TAMP is concerned with the tariff applicable for the port operations carried out within the custom notified area at water front. Accordingly, TAMP is not authorized to fix the lease rentals for the outside customs area.	No comments furnished by KPT.
(xi).	As narrated above, considering the main motto to promote the trade at the port, the land available at the port has to be offered to port users at much reasonable rate compared to nearby non port land to attract the importer/exporter and thereby their operations are more economical which in turn will boost their traffic at the port and thereby help to improve the revenue generation at the port in particular and improve the economy of country in general.	No comments furnished by KPT.
(xii).	In terms of lease land for the handling of liquid cargo is concerned, few points are very vital which requires to be considered while fixing the rates:	No comments furnished by KPT.
(a).	Distance from the water front (jetties) which will have direct impact on capital cost in terms of dockline laying cost and subsequent way leave charges.	No comments furnished by KPT.
(b).	Category of liquid cargo to be handled e.g. the chemical /petrochemical handling is concerned, requirement of the land will be much more against the capacity build (60% land has to be kept vacant to meet with the statutory norms /safety standards) and also the cost towards the installation of safety system and standards will be very high which in turn will result in too much higher capital cost compared to handling of non-hazardous/edible /non edible cargo.	No comments furnished by KPT.

(c).	Land required to be allocated nearby to the water front so that the fast evacuation of the products can be done which will help to handle the import raw material at affordable cost and in case of export higher revenue can be generated in foreign currencies which is need of hour for healthiness of the economy.	No comments furnished by KPT.
(xiii).	Hence, the categorization has to be made considering these aspects as well and it is totally unjustified to put all the terminals in the common categories and same lease rental applicable to all categories will lead to proposal unviable which will reduce the traffic at port. Over and above, Kandla Port Trust is having about 84% of the land available with the all major ports of the country and hence, there is much more scope compared to other ports for development. So, considering the land available lease rentals has to be much lower at Kandla port compared to other major ports. About 16-18 states are depending on the Kandla port for their import/export of goods. As such it is always desirable that not only land tariff but cargo handling tariff also has to be much lesser compared to other major ports for boosting the economy and exim trade. In case the proposed increase in the lease rentals is implemented, it will lead to diversion of the traffic to the nearby port which in turn will result in loss of traffic and revenue to the Government port as well as to all the port users as the operations will be unviable economically. In case the operations are continued even with the higher tariffs implemented, there will be additional burden on the import/export and finally result in to slow down the growth of the economy of country in general. It is, therefore, requested to defer the proposal submitted by KPT in the larger interest of ports users and the port in particular.	No comments furnished by KPT.
4.	**Kandla Port Karmachari Sangh**	
A.	**Written submissions dated 4 August 2014**	
(i).	INTRODUCTION:	
	It is important to note that Land	In this connection, it is mentioned that KPT has

	Policy for Major Ports has been reviewed firstly in the year 2004, 2011 and 2014. Prior to this, it is expected that there must be a Policy to regulate the allotment of land based on guidelines issued from time to time from the Ministry of Shipping. Thus, the laid down guidelines and Land Policy for Major Ports came from Govt. of India and Ministry of Shipping vide Letter No. PT-17011/55/87-PT dated 8 March 2004, PT-l1033/04/2()09-PT doted 13.01.2011 and lastly Land Policy guidelines for Major Ports - 2014, approved in January 2014. The main objective and back ground to formulate such Policy is to provide for a transparent mechanism for allotment of land in the possession of the Major Ports (a key note and background is mentioned by the Hon' ble Minister in his forward note). It is also emphasized through this Policy that such Policy guidelines will give the advantage to Major Ports and expedite the process of land allotment for various commercial activities in the Port etc. etc. a) Land vested with Kandla Port Trust is mainly classified in two ways such as Gandhidham Township Land and Kandla Land. The Govt. of Kachchh vide order dated 22/11/1954 transferred 2,20, 416 acres of land to Kandla Port and thereafter Central Government declared Kandla Port as Major Port from 08/04/1955. An additional area of 6,920 acres was acquired for developing Gandhidham Township. From above acquired land the administration could only utilize rather allotted land to the extent of about 30% only. Thus, in terms of development of land for port related activities could not be fully be utilized within last about 59 years. The quantum of income loss for not allotting land cannot be calculated in terms of money, but definitely can be imagined in terms of revenue loss to the port.	to follow the Land Policy Guidelines 2014 issued by Government of India. Accordingly, a committee was constituted for fixing market value of land and Schedule of Rates as per clause of 16.2(e) of Land Policy Guidelines 2014. The committee was headed by the Deputy Chairman of the Port. The other members were the Heads of Department of Finance, Estate and Traffic. An approved land valuer was appointed as per clause of 18(iv) of the Land Policy Guidelines, for assessing the market value of Kandla lands. The committee after going through various aspects and considering the parameters provided under clause No. 18(a) (i) to (v) of Land Policy Guidelines, 2014 had recommended the market value of the Kandla land. Land Valuation Committee recommended the rate as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines, 2014 taking into account the highest of the factor mentioned in the above policy to determine the latest market value of port land as per the categories as suggested by the Land Valuer vide minute of the Committee meeting held on 10.03.2014 and 23.04.2014. The Board of Trustees of the port of Kandla vide BR No. 203 dated 24.03..2014 & BR No. 236 dated 10.06.2014 had approved the proposal for revision of rate structure of Kandla Land fixing of Reserve price/market value for lease rentals for Kandla Land and for the Category "A" to "G". There is no provision existing in the Land Policy Guidelines-2014 that the users have to be given opportunity of being heard, while deciding the valuation.
(ii).	IMPORTANCE OF REGULATORY AUTHORITY:	No comments furnished by the KPT.
	Now, the issue comes for formation of Tariff Authority for Major Ports with a view to ensure fixing of rates, revision and ensure that value of such land	

	should be affordable and reasonable. It is important to keep in view while allowing the rate within a state such as Gujarat State, it should not be lesser in Central Government or higher in Central Government for land being managed by the Kandla Port. Thus, in fixing the rates of land TAMP has to play balancing role so that land available with the Port Trust is made available for Port related activities and Industries at affordable and reasonable rates.	
(iii).	CENTRAL GOVERNEMNT LAND & STATE GOVERNENT LAND	No comments furnished by the KPT.
(a).	In this context, it is important to note that in last about 20 years the land available with Gujarat State Government for development of Water front has been given to private developers on affordable, reasonable and in profitable manner which can be noticed from development of Private operator Ports in the vicinity and surroundings of Surat, Private developed Ports like Pipavav Port, Mundra Adani Port and many small GMB controlled minor ports whereas due to unaffordable, unreasonable or not acceptable to private participants to develop land rests with Kandla Port. This is evident from last several years tenders which could not materialize due to higher rates of Kandla Port Land (eg. 19 Plots for Storage Tank, 260 residential and commercial Plots given to public and many plots for Salt land could not be allotted).	
(b).	In comparison with other ports like Kolkata, Mumbai, Chennai etc. Kandla Port is facing several litigations related to land allotment and its rates.	
(c).	Kandla Port Land is distributed between Kandla Land which includes Gandhidham Township and 2600 acres of land is leased out to Sindhu Resettlement Corporation Limited (SRC Ltd.) which is Joint Stock Company constituted under the Provisions of Indian Companies Act, 1913 and lease deed was signed between GOI and SRC Ltd. on 28/11/1955 for 99 years.	
(d).	SRC Ltd. allots land to different private individual, companies, and firms and creates sub-leases for different purposes. KPT recovers only Transfer fees for transfer of sub-leases under	

	SRC Ltd. The Land leased out by the SRC Ltd. brought huge development in an around Township, which includes Commercial, Social, Welfare, Housing, Public utilities etc. etc. and, therefore, the very purpose of lease of 2600 acres of land has been successfully achieved by the SRC Ltd.	
(e).	Kandla Land: (a). General leases 1050 acres (b).Monthly Tenancies 0.6 acres only (2430 sq. mtrs.) (c).Leave & Licence-84 acres (d).Shops & Cabins-0.37 acres (e).Salt leases – 16,112 acres From above, it can be seen that KPT could not gainfully utilize port related Land for actual development atleast from the year 2000 onwards because of the non-allotment of land, fixing the land rates non-affordable and non-reasonable etc. Records will reveal that port management could not successfully complete the tender processes though having Land Guideline Policy from 2004, 2011 and 2014.	
(iv).	Observations:	No comments furnished by the KPT.
(a).	The TAMP has revised Gandhidham Township Land rate structure vide Notification dated 17 June 2008 – previous revision was in 10/1999 – the 1999 revised rates were to be applicable to leases allotted after1/1/1999.	
(b).	TAMP vide its Notification dated 03/02/2008 has recorded that "This Authority in its earlier order dated 21/03/2002 has taken the stand that the guidelines issued and changes made after execution of Lease Agreement cannot be seen alter the Agreement unless it is violative of any Provisions in the statute and / or the basic principles adopted by this Authority in tariff setting. Henceforth, the lease deeds to be executed are to contain recovery of lease rent @6% of the Market Value". This needs to be applied on leases, which are to be executed henceforth.	
(c).	The TAMP observed regarding unallotted Gandhidham Land as under:	No comments furnished by the KPT.
	The vacant plots required to be identified and put on tender immediately leaving those reserved for specific purposes. The list of allottable vacant plots to be made available in website.	
(d).	Reference of Maritime Agenda 2010-	

	2020 published by GOI, MOS in January 2011:	
	It is important to refer such document from where it can be seen as to how much land is used by Major Ports and Non Major Ports in India. Annexures attached with this will reveal as to how much Non Major Ports are in Gujarat State and out of 41 Non Major Ports the Gujarat State Government has developed Private Operator Ports in parallel to Central Government Kandla Port with most modernized and technical up-gradation only because of very liberal land policy with affordable and reasonable land cost.	
(v).	In view of the above, and taking into consideration all aspects KPKS is of the opinion that, least utilization of Kandla land i.e. one is Port related and another is Township related has brought huge revenue loss because of indifferent Land Policy rather to say less encouraging Land Policy in comparison to Gujarat state Government. It is very important to note that Land available to Kandla Port in comparison to other Major Ports of India is huge, but could not be developed and utilized due to unrealistic Land Policy as well as rates in comparison to Gujarat State. The time has come that TAMP has to address this vital issue while approving the rates keeping in view the rates brought out by the State Government for its non- major ports.	No comments furnished by the KPT.
(vi).	With a view to bring maximum business to the Kandla Port and for that purpose revision of Land rates for Major Ports including Kandla is sought for approval from TAMP, whereas, in regard to Gujarat State, Non Major Ports, no such authority is created thereby double standards within Major Ports and Non Major Ports prevails. Thus, time has come to re-look on single Tariff Authority for the Sea Ports in India, so as to bring equality and fairness in relation to Land rates and its maximum utilization for Port based industries.	No comments furnished by the KPT.
B.	**Comments dated 16/19 August 2014.**	
(i).	The guidelines from Govt. are to be kept in mind while arriving at a decision by the Statutory Authority. But, market competition in same sector is also one of the major point to be	No comments furnished by the KPT.

	kept in view as otherwise once business is diverted from Major Port to Non-Major Port (in this case Kandla Port is facing tough competition from Non-Major Ports like Mundra Adani (40 Kms.away), Pipawa Port (300 Kms. away) and few others). Thus, fixing rate in Major Port like Kandla has to be considered based on what tariff is being charged by the Non-Major Ports.	
(ii).	Similarly, in the case of land for which rates are required to be fixed is to be taken in two ways such as Land within Port limit and being allotted on lease basis of 30 years. On other side State Land on free hold policy is available within limited distance also plays major role. Thus in that case investor may like to opt for freehold land and not 30 years lease rent or leave & license with many restrictions.	No comments furnished by the KPT.
(iii).	It is further more important that in case of land available for particular activities like POL and storage of edible oil is not being allotted and remaines un-allotted. Keeping such land un-allotted for decades leads to loss of particular commodities as well as diversion of traffic to nearby Non-Major Ports e.g. Tank Form developed by Mundra Adani, Pipawa by IMC, Hajira by Reliance,etc. etc. are glaring examples.	No comments furnished by the KPT.
(iv).	Let us come to Govt. policy to invite investor in the name of PPP or SVP with a view to bring major players in developing Port Sector in the Non-Major Ports because of the reason that the State Govt. has liberalized of its land policy with lower cost, the investor do not wish to invest in Major Port due to high cost and small period of lease policy. Thus, the investor is automatically not interested to invest in the Major Ports.	No comments furnished by the KPT.
(v).	It is also matter of fact that Private investor can allow any concession whereas Govt. Controlled Major ports can not grant any concession as being done by the Non-Major Ports.	No comments furnished by the KPT.
(vi).	It is known fact, that Govt. organization faces all type of hindrances and constrains whereas private Non-Major Ports are free to do anything and everything.	No comments furnished by the KPT.
(vii).	Market ups and down also plays major role and therefore investor are too vigilant to invest in short term lease, rental, etc. in Major Ports and they prefer to invest in Non-Major	No comments furnished by the KPT.

	Ports wherein liberal land policy and free hold land policy.	
(vii).	It is necessary, to encourage export orient development rather creating more facilities for Import.	No comments furnished by the KPT.
(ix).	Land valuation must be based on the surrounding available private, State Govt. and free land rather lease period.	No comments furnished by the KPT.
(x).	Port management / Govt. Valuer must examine as to whether traffic of Major Port will divert to adjoining non major ports because of high cost of land and 30 years lease, etc.	No comments furnished by the KPT.
(xi).	TAMP has to scrutinize as to whether rental is profitable or premium in long lease. One bid cannot be taken as base for fixing price as various factors are related in fixing price e.g. Freehold land, limited lease hold like 10, 20 or 30 years with easy renewal clauses, logistic cost in handling the respective cargo from ship to shore and to factory, rail and road connectivity, etc. Maximum utilization of available land with easy terms and reasonable / affordable will attract investors.	No comments furnished by the KPT.

4. Subsequent to joint hearing, the comments were received from Shri Dusyant Arunkant Shah vide his letter dated 18 August 2014 and from Kandla Liquid Tank Terminal Association vide its letter dated 3 September 2014. The KPT has responded vide its letter dated 16 September 2014. The summary of the comments of Shri Dusyant Arunkant Shah and reply of KPT thereon are tabulated below:

	Comments of users	**Reply of KPT**
1.	**Shri Dusyant Arunkant Shah**	
(i)	KPT has not consulted them (a stakeholder) nor discussed with the trade to arrive at consensus before finalization for the revision of SOR. Further scrutiny of the revised proposal is required because –	(i). While framing the proposal of Revision of rate structure of Kandla Lands of Kandla Port Trust, the provisions of Land Policy Guidelines, 2014 are strictly followed. As per practice in vogue, TAMP had conducted Joint hearing on 4.08.2014, wherein queries raised have since been clarified. (ii). The revision of rate structure of Kandla lands has been made as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines, 2014. The other queries raised related to Civic Body Redressal. (iii). The market value has been decided as per clause No. 18 (a), (b) & (c) of Land Policy Guidelines, 2014. The other issues are relating to the dispute with KPT and not related with the issues of Revision of rate structure of Kandla land.
(a).	KPT has not called or informed or displayed detailed copy of revised proposal and valuation made by it. They came to know from newspaper report that TAMP joint hearing was scheduled.	
(b).	Land policy Guideline's main objectives is a transparent methodology and for the benefit of the stakeholder. Therefore, time may be given to put their queries before TAMP for consultation.	
(ii).	The rate structure is going to be 4.25 times higher than it was up to 31.12.2013. For this, stipulations about market valuation of land in	

<table>
<tr><td></td><td>the guidelines stated to have been complied with. Some of the main points made:</td><td></td></tr>
<tr><td>(a)</td><td>Market value of plots/properties were down because GDP was down after 2008-2009. Same applies here.</td><td></td></tr>
<tr><td>(b)</td><td>Plots allotted to Shri Dusyant Arunkant Shah is East-side of NH-8 and developed Township is on West-side of NH-8. In 2012-13-14, there is new elevated high-rise 4-lane bridge, road and abutment constructed for by-pass traffic for Kandla, in middle of NH-8 living sides for service road. Therefore, front side of plot building is now detached from main city, and opposite side of street (service road) is dead wall. Because of traffic rules it is now difficult to reach / the approach road from city. Now, it is a remote plot and can’t be seen from developed city side. Previously they were on NH-8 but now on service road. So, it may reduce value of their plot/building after 2013.</td><td></td></tr>
<tr><td>(c)</td><td>There is no new development in nearby area in 30 years because no plot has been allotted in this side of our plots/bldg., which reduced demand on this site.</td><td></td></tr>
<tr><td>(d)</td><td>KPT has not incurred any expenses for development of the said side of the road because this road belongs to National Highway.</td><td></td></tr>
<tr><td>(e)</td><td>Our plot bldg. is in low-lying water area. Therefore, in Monsoon it is submerged in water. So its market value downgraded than it was before.</td><td></td></tr>
<tr><td>(f)</td><td>There is no State ready-reckoner rate available for this land-area for freehold land for year after 2011 also. In Gujarat there is ready reckoner rate for lease hold land of 99 years and of 30 year lease land.</td><td></td></tr>
<tr><td>(g)</td><td>After earthquake in Kutch maximum construction of only ground floor + 2 stories is allowed with height restriction. So in their case F.S.I. is restricted max. 1.5 only. So lease-rent go very high for limited stake holder because one can’t afford the increase of rental amount in business here.</td><td></td></tr>
<tr><td>(h)</td><td>There is no development in Estate business in 30 (thirty) years in nearby area for which purpose the plot is allotted.</td><td></td></tr>
<tr><td>(iii).</td><td>Previously, in deciding market value KPT has not complied with the stipulations contained in applicable land policy and lease agreement with us. In the TAMP of Notification No. 106 dated 11-05-2011 it is stated that:

Tamp query and reply of KPT in the last Order is brought out below:

<table><tr><th>Sr. No.</th><th>TAMP’s Queries</th><th>Reply from KPT</th></tr><tr><td>(1).</td><td>KPT has sought approval for revised rentals from 1 July 1999. Kindly confirm that the</td><td>The lease deeds of the land allotted in Kandla have been formulated on different lines over the years, as per the prevailing</td></tr></table></td><td>No comments furnished by the KPT.</td></tr>
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<td>lease agreements entered into by KPT in the past with lessees contain a clause allowing for retrospective revision of the lease rentals.</td>
<td>Land Policy Guidelines in vogue some of the conditions are as mentioned hereunder.

(a). "The Ground Rent hereby reserved may at the option of the lessor be revised and refixed at the end of every five years on or after first day of January."
The Ground Rent will be revised on the basis of market value prevailing at the time of revision of ground rent. The market value shall be determined by Chairman, KPT or any other authority empowered by him and a decision taken on his behalf in this regard shall be final and legally binding on the lessee and not open for any dispute by lessee. The lessee shall pay the ground rent at revised rates from the date of revision.</td>
</tr>
</table>
Here, the KPT has suppressed full lines of rate revision (Paragraph) in their reply to TAMP Query as in our lease agreement.
On the basis of such wrong/answer by KPT, TAMP ordered rate-revision on 11.5.2011. From that order dated 11.5.2011 ambiguity started regarding lease rates, it revision, its interest and amount of bill for payment of lease-rent, with Kandla Port Trust and stake holders.
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<td>2.</td>
<td>Kandla Liquid Tank Terminal Association</td>
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<td>(i).</td>
<td>Pending fixation of Tariff, the Tender process for auctioning of the land in terms of New Land Policy Guidelines 2014 cannot be proceeded with. Owing to delay in commencing the process of E-Tender cum E-auction not only has the Port been losing revenue but the exporters/importers have also been facing difficulties owing to the shortage of storage capacity for liquid cargo. It would not be out of place to mention that already the Port is reeling under acute shortage of storage' capacity for liquid cargo which due to certain reasons drastically got reduced by around 33% coming down to around 11 lacs KL from the earlier level of 15 lacs KL. While the Port has floated certain tenders for allotment of Land under G-1 category, including for one existing installation, the progress on this front has been tardy and cannot be completed until the Tariff is fixed from your end.</td>
<td rowspan="3">Kandla Liquid Tank Terminal Association (KLTTA) vide said letter has requested TAMP to expedite fixation of tariffs. KPT has from time to time furnished reply/comments raised by TAMP on various lessees, in connection with the approval of revision of rate structure.

The contention of KTTA seems to be right that pending fixation of tariff, the tender process for auctioning of land in terms of new Land Policy Guideline 2014 cannot be proceeded.

The points raised by the Association are not representation towards the proposal of KPT for `Revision of rate structure of Kandla Land of KPT'.</td>
</tr>
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<td>(ii).</td>
<td>Due to shortage of storage capacity, the Vessels carrying liquid cargo have to wait at the Port resulting into payment of demurrage by the EXIM community which on an estimate works out to app. ₹10 crores per month i.e. ₹120 crores per annum.</td>
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<tr>
<td>(iii).</td>
<td>The storage charges which were earlier hovering around ₹150/- per KL per month in the month of June, 2012 (when storage capacity of 15 lacs KL was available at the Port) have shot through the roof and are presently prevailing at</td>
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</table>

	around ₹350/- to ₹400/- per KL. The stupendous increase in the rate for storage has resulted into the Exim community requiring to bear the extra burden of app. ₹24.75 crores per month i.e. ₹297 crores per annum which, needless to say, ultimately gets passed on the Consumer.	
(iv).	Needless to mention that in addition to the Exim Trade, the Port Trust has also suffered in the process as due to reduction in the storage capacity, the liquid cargo of app. 33% of the earlier total capacity for storage got diverted to other ports.	
(v).	Due to this magnitude of diversion of liquid cargo away from Kandla Port, the Port's revenues from handling of liquid cargo also got reduced by around 33% which on an average works out to ₹8crores per month i.e. ₹96crores per annum, which by no means is a small amount.	
(vi).	Over and above this, the Port has been losing whopping sums of money day in and day out which it can earn in the form of lease rental by expediting the process of E-Tender cum E-auctioning thus making it imperative to hasten the process of fixation of tariff to avoid any further loss of revenue to the Port and also to ameliorate the existing position of shortage of storage capacity at the Port.	

5. The KPT vide its letter dated 12 September 2014 has furnished its comments on the comments of Food Corporation of India (FCI), which apparently seems to be received by the port directly from FCI. It is relevant to state here that we have not received any written comments from FCI nor have we forwarded the comments of FCI to KPT. However, the points made by KPT on the comments of FCI (not received by us by apparently received by the port directly) are given below:

(i). On Para 1 & 2:

In this connection, it is submitted that following one plot of land allotted to M/s. FCI on 30-year lease basis which was expired on 31-08-2012 are as under:-

Name of Lessee	Land Admg. (Sq.Mtrs.)	Lease Expired.
M/s. Food Corporation of India	152070	31-08-2012

The contention of FCI is wrong, as per the main terms and conditions annexure to letter no *.LW/Pl/20131386* dated which is stipulated as under:-

(a). The allotment of plot will in the first instance be provisional and be governed by the terms and conditions contained herein and in the letter of allotment and (then agreement to lease will be executed by the intended lessee at his cost and)"

(b). All Rules and Regulations made by the Board of Trustees of Port of Kandla, under the provisions of the Major Port Trust Act, 1963 with the approval of the Central Government with regard to the use and enjoyment of the demised premises, shall be deemed to be part of the lease deed and binding on the lessee.

(ii). As per the condition No. 06 of the Lease deed executed on 4.12.1995, which provides the Ground rent fixed for the plot shall be revised/enhanced/refixed at the option of the lessor at the end of the lease deed and binding on the lessee.

(iii). The contention of FCI is wrong, this office also issued arrears bill to CWC as per revised rate approved by TAMP from 1999.

(iv). As FCI has executed the lease deed, KPT follow the lease deed conditions, and Govt. Guidelines issued by Ministry of Shipping from time to time.

(v). The lease period was already expired, the renewal of lease and terms and conditions will be governed as per the Land Policy Guideline, 2014 and Guidelines issued by Ministry of Shipping time to time.

(vi). Since, lease period was already expired, the above bill has been issued as per the rate proposed to the TAMP by KPT for unauthorized occupation of KPT land.

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