DEENDAYAL PORT TRUST

SAGARMALA
PORT-LED PROSPERITY

SIPC KANDLA
RIDE THE WAVE OF PROGRESS

स्वच्छ भारत
एक कदम स्वच्छता की ओर

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EG/WK/4604/XI/Part –II

Date: 06.01.2020

To,
The Secretary,
Tariff Authority for Major Ports,
4th Floor, Bhandar Bhavan,
Muzawar Pakhadi Road, Mazgaon,
Mumbai – 400 010.

Sub: - Developing Dry Bulk Terminal off Tekra near Tuna on BOT basis –Stressed PPP Projects – Rationalization of Upfront Tariff for Storage-compliance of the observations-reg

Ref: (1) EG/WK/4604/XI/Part –II/361 dated 23.12.2019.
(2) TAMP/64/2019/-DPT dated 03.01.2020

Kindly refer above cited correspondence for the said subject.

As desired, point –wise compliance is submitted below for kind perusal:-

Sr no	Observations of TAMP	Compliance of DPT
(i)	Requisite details with documentary evidence to establish that said project fulfils the 3 criteria prescribed in the MOS letter dated 11 July 2018 in para 3 read with 6 for categorization of PPT Project as "Stressed Project".	The documentary evidence establishing that subject Project is fulfilling 3 criteria as per MOS letter dated-11.07.2018 towards categorization as "Stressed Project" are enclosed Annexure – (Please refer page no. 597 to 604 of Agenda Item No.29 of DPT's Board meeting held on 06.12.2019)
(ii)	The said details to be substantiated by a Certificate from a practicing Chartered Accountant certifying the requisite details as per para 3 (ii) and (iii) of the MOS letter for categorization of the said PPP Project as Stressed Project by the DPT. This is in line with the approach followed by other Major Port Trusts as well like VPT who had filed proposal in pursuance of MOS letter dated 11 Jul 2018.	A certificate issued by the Chartered Accountant certifying Cash Loss, Net Loss & Net Worth for the details as per para 3(b) & 3(c) of MoS letter dated 11.07.2018 is enclosed as Annexure - (Please refer page no. 602 to 604 of Agenda Item No.29 of DPT's Board meeting held on 06.12.2019).
(iii)	Approval of Board of Trustees of DPT for categorization of the said PPP project as	In the DPT's letter dated – 23.12.2019, by enclosing the Resolution no.94 of Board meeting dated

	Stressed Project based on the 3 criteria prescribed in the MOS letter dated 11 July 2018.	06.12.2019 as Annexure – D, it was submitted that the proposed rationalization of storage tariff for the Project has been approved by Board of DPT. The aforesaid approval of the Board is on the proposal submitted under Agenda item no.29 (copy enclosed). Under the Agenda item by submitting the documents specified in response to the above observations at Sr no. 1 & 2 and by furnishing the detailed examination of such documents by Transaction Advisor of DPT for PPP projects. (Please refer Page 605 to 607 of Agenda item no 29), it was submitted to Board that the subject project fulfils the criteria(s) as specified by MOS vide its directives dated 11.07.2018, hence, the subject Project may be classified as Stressed Project (Please refer para 19.1 at page no. 552 of Board Agenda item No.29). By considering above, the Board has approved the Proposal of rationalisation of storage Tariff. By this it is construed that the Board has also approved categorization of the subject PPP Project as Stressed Project based on the 3 criteria prescribed in the MOS letter dated 11.07.2018.
(iv)	The DPT proposal dated 21 December 2019 in concluding paragraph states that proposed Rationalized storage Tariff will be effective from 11 July 2018 i.e. DPT seeks retrospective amendment from 11 July 2018. It is relevant here to state that the said MOS letter dated 11 July 2019 does not contain any provision for retrospective effect of rationalisation in storage charges of Stressed PPP project. The DPT may, therefore, suitably amend its proposal for considering it prospectively.	The proposal of rationalization of storage Tariff for the Project will be effective from 11.07.2018, the date on which the MoS have communicated the Guidelines/directives for Stressed project, viz. removal of stress including of rationalization of storage charges of Stressed PPP Projects. Hence, the subject proposal of DPT towards rationalization of storage Tariff may not be construed as retrospective for the purpose of its effectiveness. Accordingly, as approved by DPT Board, the proposed rationalisation of Storage Tariff may be approved w.e.f. 11.07.18, the date on which the MoS have communicated the Guidelines/directives for Stressed project.

Thanking you.

Enclosed: As above.

Yours faithfully,

Chief Engineer

ITEM No.29

"DEVELOPING DRY BULK TERMINAL OFF TEKRA NEAR TUNA OUTSIDE KANDLA CREEK AT KANDLA PORT ON BOT BASIS" – STRESSED PPP PROJECTS – RATIONALIZATION OF STORAGE CHARGES

1. The proposal is for approaching TAMP for rationalizing the tariff for storage for the project in accordance with directives of MoS vide letter dated 11.07.2018

2. TAMP vide notification no G.no. 285 dt 02.11.2010 notified the Upfront Tariff for the Project in accordance with the Guidelines for Upfront Tariff setting for PPP Projects at Major Ports-2008 vide notification no TAMP/52/2007-Misc dtd 26.02.2008. The Tariff approved by TAMP are for the "Berth hire charges", "Cargo Handling Charges", "Storage" & "Miscellaneous charges". The approved tariff for storage charges, for period from date of approval of the Tariff i.e. 02.11.2010 upto 31.03.11 are as under:-

For Import & Export (Rate in Rs. Per MT per Day)

Commodity	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
All type of cargo	Rs 2.07	Rs 4.14	Rs 6.21

3. As per Tariff Order, the tariff will be indexed to inflation of 60% of valuation in WPI occurring between 01.01.10 and 1st January of relevant year.

4. The approved Upfront Tariff was the part of RFP, invited among the bidders for selection of the Concessionaire of the Project.

5. DPT had entered into Concession Agreement (CA) with M/s Adani Kandla Bulk Terminal Pvt. Ltd on 27.06.2012 to develop the Project on BOT Basis for 30 Years Concession Period. Subsequent to construction of the Project, the Project is currently under operation since 10.02.2015.

6. Concession Agreement of the Project consists of the above referred Tariff, duly approved by TAMP.

7. Considering the Representation of the Concessionaire, as approved by the Board vide Res no 300 in its meeting held on 20.10.14 **{Annexure – 74 (P:559)}** , a proposal for amendment to approve Upfront Tariff for Storage for the Project sent to TAMP on 26.11.2014 for approval. As per the proposal, the amended tariff for the storage were as below:-

For Import & Export (Rate in Rs. Per MT per Day)

Commodity	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
All type of cargo	Rs 0.15	Rs 0.31	Rs 0.46

8. The above tariff whereas on 02.11.2010 and all other approved terms and conditions under the tariff order were proposed to remain unaltered. Further, in the proposed amendment to storage Tariff, the Annual rate of return from storage is maintained same as per the original tariff approved by TAMP. The Tariff was based on the evacuation of dry Bulk cargo from existing berths of DPT during the year 2007-08, 2008-09 & 2009-10.

9. In response, TAMP vide letter TAMP/42/2009-KPT dated 08.01.15 has informed about non consideration of the aforesaid proposal.**{Annexure – 75 (P:560-563)}**

10. After signing of the Agreement, on 19.08.2013, M/s AKBTPL had directly approached TAMP for revision of the approved Tariff for storage. On 26.09.2013, TAMP replied to M/s AKBTPL (by endorsing a copy to DPT) stating that their request for revision of the Tariff is found to be beyond the scope of Guidelines for Upfront Tariff for PPP Projects of Major Ports, 2008.

11. The above developments were informed to the Board vide Agenda Item No.38(I) in its meeting held on 17/03/2015.

12. Subsequently, MoS under the Chairmanship of Chairman IPA formed a committee on 28/12/2017 to take decision on Port issues such as MGT, Permissions, Port charges, storage charges etc. of PPP users. The committee, after detailed examination of various issues including the issue of storage charges faced in the PPP projects in various Major Ports (which also includes the case of M/s AKBTPL), submitted its reports on 4.4.2018 to the Ministry.

13. A committee under the chairmanship of AS&FA, MoS along with JS(P) and Chairmen of DPT, VPT &KoPT, was constituted by the Ministry vide letter No. PD-13/26/2015- PPP Cell dated 21.05.2018 for examination of IPA Report for suggesting future course of action.

14. Based on the recommendations of the Committee headed by AS&FA, MoS has issued directives vide bearing no PD-13/1/2018-PPP Cell dated 11.07.2018 along with Report (dated 04.04.2018) of the Committee chaired by Chairman, IPA for removal of the Stress of the Stressed project. **{Annexure – 76 (P:564-596)}**

15. The Report dated 04.04.2018 on the issues pertaining to Stressed project, MoS vide letter dated 11.07.2018 has furnished the methodology & directives for removal of stress of the stressed projects. The point under the letter in respect of classification of PPP project as Stressed project is reproduced below:-

Committee recommended the following criteria for classification of a PPP project as 'Stressed Project':-

i. The project is sub-optimally utilized as evidenced by the actual cargo handled by the operator during two preceding Financial years being less than 70% of the projection as per DPR/Feasibility report forming part of the bid document and *ii. Project SPV incurring cash loss continuously for two preceding financial years and*

iii. That the losses incurred by concessionaire has caused atleast 50% erosion of its peak Net Worth during the operation period.

16.The Report dated 04.04.18 of the Committee on Stressed project covers the issues of Storage charges for the project of "Developing Dry Bulk Terminal off Tekra near Tuna on BOT basis".

17.Considering above, M/s AKBTPL was requested to furnish the details to in respect of Traffic handled, loss incurred by them if any etc to assess whether the project is fall under above criteria of Stressed Project as per MoS letter dated 11.07.2018

18.In response, M/s AKBTPL vide their letter dated 26.07.2018 furnished the details in respect of (a) cargo handled, duly certified by Traffic Department of DPT, during preceding two financial year (b) Cash loss incurred for two preceding financial years, duly certified by statutory auditor (c) year-wise net worth during operation phase duly certified by statutory auditor **{Annexure – 77 (P:597-604)}**

19.The same was referred to the Transaction Advisor (TA)for their examination and furnishing their opinion. In response, TA vide letter dated 03.08.18 furnished their opinion **{Annexure – 78 (P:605-607)}.** The brief of opinion sought and opinion furnished by TA is submitted below for ready reference:-

1. *Whether the subject project can be classified as a stressed project in consistence with MoS directives dtd 11.07.18*

   The subject project fulfils the criteria(s) specified by MoS vide its directive dated 11.07.2018, hence the subject project may be classified as a Stressed Project.

2. *Whether for removal of stress of the project,the proposal to amend the tariff for storage (approved by DPT Board vide Res 300 dated 20.10.14can be re-sent to TAMP for approval.*

   Pl refer to the MoS letter vide no. PD-13/1/2018-PPPCell dated 11.07.2018 wherein it is mentioned that " The Committee headed by AS&FA, MoS is of the view that where ever such issue of abnormal storage charges emerges in Stresses Projects as defined in Para 3 above, the port may approach TAMP under the provisions of " Amendments, Modifications or Alterations" to the terms and conditions of the Concession Agreement with an appropriate proposal for rationalization of storage charges in consultations with Concessionaire's so as to achieve the ARR as per the TAMP Guidelines / notifications"

20.M/s Resurgent India Private Limitedbeing TA, based on the evacuation of the cargo from the terminal during 2015-16, 2016-17 & 2017-18 has worked out the Tariff for storage, by keeping the revenue requirement for storage for the project same as per the originally approved tariff for the project, as per below. The same proposal was placed before Chairman, requesting his approval.

Reference	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
Revised proposed tariff	Rs. 0.29	Rs. 0.57	Rs. 0.86

The above tariff will be indexed to inflation of 60% of valuation in WPI occurring between 01.01.10 and 1st January of relevant year.

21.As directed by the Chairman, Transaction Advisor has made a detailed presentation on the proposal before Chairman and HOD's on 29.10.18. Concluding the meeting, Chairman has directed to request IPA to intimate about the methodology adopted towards rationalizing the upfront tariff for storage for the project is permitted as per the above referred Ministry's directives dated 11.07.2018

22.Accordingly, vide letter dated 30.10.2018, IPA was requested to intimate the methodology adopted towards rationalizing the upfront tariff for storage for the project is permitted as per Ministry's directives dated 11.07.2018 **{Annexure – 79 (P:608-610)}.**

23.In response, IPA vide email dated 17.01.2019 forwarded the opinion prepared by IPA-PPP expert and resource person. In the opinion, the PPP expert concluded that "*while framing the opinion calculations made by DPT has also been seen and it is observed /concluded that the same are in order. Accordingly, DPT may take up with TAMP for approval of proposed rates.*" **{Annexure – 80 (P:611-612)}.**

24.In view of above developments, Chairman, DPT has approved the following proposal: -

i. The said project "Developing Dry Bulk Terminal off Tekra near Tuna on BOT basis" is a "Stressed Project";

ii. to rationalize the tariff for Storage for the project;

iii. to approve revised tariff proposal as perbased on actual evacuation of cargo from the subject project during 2015-16, 2016-17 & 2017-18 and to send the same to M/s AKBTPL to seek their comments, if any.

25. As per MoS directives dated 11.07.2018, the proposal of rationalization of storage tariff is to be finalized in consultation with Concessionaire.

26. DPT vide letter dated 31.01.2019 shared the above tariff proposal with M/s AKBTPL and requested to provide their comments, if any; so that DPT may approach TAMP for approval of the same.

27.In response, M/s AKBTPL vide its letter dated 01.02.2019 has accepted the revised Storage Charges as calculated and proposed by DPT based on M/s AKBTPL's cargo evacuation pattern of 2015-16, 2016-17 &2017-18; with below comments which M/s AKBTPL has stated to raise at appropriate time during TAMP hearing on the proposal **{Annexure – 81 (P:613-614)}.**

i) The Storage Charges as notified in the TAMP Order dated 2nd November 2010 in respect of the subject terminal were exorbitantly high and accordingly your good office under the directions as contained in order of MoS at reference (i) above have made the fair calculations and calculated revised tariff for the same within the framework of TAMP guidelines for ARR. We appreciate the same and concur with the calculations, with the request that same be made applicable since inception of the project. Since the subject project is classified as a stressed asset, any recovery of revenue share on storage charges at old rates will increase the stress and we do not have the cash flows to absorb liquidation of such notional liability.

ii)The revised tariff may be reviewed after 1 year of implementation as given in clause 7 of the order of MoS at reference (i) above.

28.The above proposal was discussed in the joint meeting held on 21.02.2019 chaired by the Chairman, DPT with Concerned HoDs, Port officials and Transaction Advisor for PPP projects. Concluding the meeting, it was decided that the storage tariff for the project should be rationalized in line with the option, suggested by the committee, and referred under para 4 of the MoS Letter dated 11.07.2018. **{Annexure – 76 (P:564-596)}**

29.Accordingly, M/s Resurgent India Pvt Ltd being the Transaction Advisor vide letter dated 21.02.19 has submitted the following opinion: -**{Annexure – 82 (P:615-617)}.**

"we have analyzed Para 4 of MoS Letter upon which DPT has requested us to revise our already submitted tariff proposal, wherein MoS had reiterated the opinion of the Committee (i.e. the Committee formed under the Chairmanship of Chairman IPA on 28.12.2017 to take timely decision on port issues such as MGT, Permissions, port charges, storage charges etc. of PPP users) ("hereinafter referred to as "Committee") for rationalization of storage charges levied at the DBFOT terminals to make them competitive with neighboring Non-Major Ports which are run by private organizations.

On comparing the reiteration made at Para 4 of MoS letter, in-line with the report submitted by the Committee on 04.04.2018 (which was enclosed as Annexure – I of MoS letter) ("hereinafter referred to as "Report"); we observe anomaly between views expressed by the Committee mentioned at the ending part of Chapter 3 therein and the reiteration made at Para 4 of MoS Letter; such anomaly is discussed as under:

Para 4 (ii) of MoS letter indicates that the "Concessionaire shall pay Royalty equal to 1% of ARR if the cargo is cleared after the expiry of free period as per executed Concession Agreement but within the extended free period". On contrary, Chapter 3 (1) (d) (ii) of Report indicates that the "Concessionaire shall pay Royalty equal to quoted % of 1% of ARR if the cargo is cleared after the expiry of free period as per executed concession agreement but within the extended free period".

*In view of afore-observed anomaly between the MoS letter and the Report of Committee, we understand that there seems to be an inadvertent slip-up on reiterating the opinion of Committee in MoS letter. Under such circumstance of aberration, **we have considered the views provided under Chapter 3 (1) (d) of the Report of Committee for arriving at the revision towards rationalization of storage charges which is enclosed as Annexure – A for your kind perusal**.*

Further, since the revenue towards the Storage Charge for the Present project was envisaged as 5% of ARR during the Tariff approval stage, 5% of ARR towards Storage charge has been considered for the present rationalization deviating from 1% of ARR towards Storage charge as mentioned at the Report".

Charges as per the methodology given under Chapter 3 (1) (d) (ii) of Committee Report			
S. No.	***Storage days***	***Storage Charge/MT/Day***	
		Approved SOR	***Revised Proposal***
1	*0 to 5 days*	*No Charges*	*No Charges*
2	*6 to 15 days*	*2.07*	*No Charges*
3	*16 to 25 days*	*4.14*	*No Charges*
4	*26 to 35 days*	*6.21*	*No Charges*
5	*36 to 45 days*	*6.21*	*No Charges*
6	*46 to 51 days*	*6.21*	*No Charges*
7	*52 days onwards*	*6.21*	*6.21**
** to be escalated up to 60% of WPI indexation as issued by TAMP time to time*			

Rationalized as per Chapter 3 (1) (d) (ii) of Committee Report	***Days***	***Revised Proposal***
	0 to 5	*Free period as per the Concession Agreement*
	6 to 51	*Royalty equal to quoted 25.09% of 5% of ARR*
	52 days onwards	*25.09% on the Actual Storage Charges recovered or 5% of the ARR, whichever is higher*

30. The revised calculation of tariff for storage are communicated to M/s AKBTPL with request to provide your comments, if any, so that DPT may approach TAMP for approval of the same. In response, M/s AKBTPL vide letter dated 22.02.19 M/s AKBTPL vide letter dated 22.02.2019 furnished the consent to accept the revised proposal of DPT **{Annexure – 83 (P:618-619)}.**

31. Subsequently, as decided, the above proposal to rationalize the tariff in line with the option, suggested by the committee, and referred under para 4 of the MoS Letter dated 11.07.2018 along with its detailed calculations were sent to IPA for its scrutiny and their opinion.

32. In response IPA vide email dt.06.03.2019 furnished their detailed opinion **{Annexure – 84 (P:620-623)}.** The concluding part of the opinion is submitted below for kind perusal: -

It may be observed that above referred tariff rates meet this requirement and hence DPT may approach TAMP for revision of tariff on above basis.
It may be added further that ***the rate proposed in Board Note envisage tariff of Rs.6.21 per MT Per day after free period of 45 days. We are of the view that if there are time slabs with increasing storage charges, the concessionaire shall be encouraged to get the cargo evacuated at the earliest resulting in optimum utilisation of the storage facility at port. In the proposed rate structure, there is no motivation to evacuate the cargo before 45 days.***

33.Considering opinion of IPA above, it is now proposed to rationalize the tariff for storage by rationalizing the Rate of Tariff instead of rationalizing the free period of storage as stated in the para 20 above.

34.Further, with respect to the proposed rationalized tariff for storage, M/s.AKBTPL has furnish an undertaking to pay the Royalty of 25.09 % for Storage Charges to the Concessioning Authority, either on the basis of Gross Revenue from storage or Estimated Annual Revenue Requirement for storage as per Tariff Order G. No. 285 dated 02.11.2010 with escalation, whichever is higher **{Annexure – 85 (P:624-625)}**

35.After start of operation in February -2015, the Concessionaire is not paying the Royalty on Storage to DPT. As per DPT's Auditor Report, there is an outstanding principal amount of Rs16,91,99,730.70 (approx.) as on 31.03.2018 payable by AKBTPL to DPT towards Royalty on storage. Regarding payment of entire outstanding dues by the Concessionaire towards royalty for storage, in the joint meeting with AKBTPL, the representative of AKBTPL was insisted to pay the entire outstanding dues towards royalty for storage. In response, they agreed to submit an undertaking.

36.M/s AKBTPL also undertake to pay the Royalty of 25.09% on Storage Charges accrued till 10th July 2018 (1 day prior to the date of MoS Letter with reference to removal of Stress) and calculated as per approved upfront tariff including escalation, as audited by auditor of DPT, along with interest thereon, till the date of aforesaid payment. M/s AKBTPL further submitted that the matter for effectiveness of Rationalizing Tariff from 11th July 2018 (date of MoS Letter with reference to removal of Stress) will be taken up with the TAMP and/or Ministry of Shipping if required. If conceded, we undertake to pay (i) Royalty of 25.09% on Storage Charges accrued post 10th July 2018 and calculated at the Rationalized Rates, along with interest thereon, till the date of aforesaid payment **OR** (ii) 25.09% of estimated annual revenue requirement for storage as per Tariff Order G.No.285 dtd 02.11.10 with escalation and along with interest thereon, till date of aforesaid payment, whichever is higher of (i) & (ii).**{Annexure – 86 (P:626)}**

37.Regarding payment of entire outstanding dues by the Concessionaire towards royalty for storage, the concerned HoDs and port officials had a joint meeting with the representative of AKBTPL, but, M/s. AKBTPL by justifying their stand shown their constraint for the same.

38.As stated in the para 36 above M/s. AKBTPL will request TAMP/MoS to effect the proposed rationalization of tariff from 11.07.2018, the date of MoS letter with reference to removal of stress **{Annexure – 76 (P:564-596)}**

In this regard it is to submit that the subject matter of tariff for storage is long pending. Further, to ensure optimum utilization of the Project and to avoid any chance of litigations, it may be more appropriate on the part of DPT to request TAMP to effect the proposed rationalization of tariff from 11.07.2018.

39.In light of above in consistence with directives of the Ministry vide letter dated 11.07.2018, it is proposed to send the proposal for revision of tariff for storage as per **Annexure – 87 (P:627-628)}**(achieving the Annual Revenue Requirement as per already approved TAMP Notification) based on the actual evacuation of cargo from the subject Project during the years 2015-16, 2016-17 and 2017-18) to rationalize the tariff for storage. It is also proposed to send the submission of AKBTPL vide letter dated 01.02.2019 **{Annexure – 81 (P:613-614)}** to TAMP along with Tariff proposal for storage.

40.In light of above, Board is requested to kindly approve: -

i. In consistence with directives of the Ministry vide letter dated 11.07.2018 ,to approve the Draft rationalized tariff of Storage Charges (achieving the Annual Revenue Requirement as per already approved TAMP Notification) based on the actual evacuation of cargo from the subject Project during the years 2015-16, 2016-17 and 2017-18 as per below :

Reference	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
Revised proposed tariff	Rs. 0.29	Rs. 0.57	Rs. 0.86

The above tariff will be indexed to inflation of 60% of valuation in WPI occurring between 01.01.10 and 1st January of relevant year.

ii. To approach TAMP for approval of the above proposed Draft rationalized tariff of Storage Charges as per the directive issued by MoS provided under its letter dated 11.07.2018. Also to send the submission of AKBTPL vide letter dated 01.02.2019 to TAMP along with Tariff proposal for storage.

iii. The proposed Rationalised Tariff for storage will be effective from 11.07.2018.

iv. The proposed Rationalised Tariff for storage will be reviewed after one year from date of Notification i.e the proposed tariff will be effective for initial period of one year or approval of revised tariff, if any, post review whichever is later.

v. To confirm the above resolution

41. The Board note is recommended by the Chief Engineer and concurred in by FA&CAO.

DRAFT BOARD RESOLUTION

Resolved to approve –

i. In consistence with directives of the Ministry vide letter dated 11.07.2018 ,to approve the Draft rationalized tariff of Storage Charges (achieving the Annual Revenue Requirement as per already approved TAMP Notification) based on the actual evacuation of cargo from the subject Project during the years 2015-16, 2016-17 and 2017-18 as per below :

Reference	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
Revised proposed tariff	Rs. 0.29	Rs. 0.57	Rs. 0.86

The above tariff will be indexed to inflation of 60% of valuation in WPI occurring between 01.01.10 and 1st January of relevant year.

ii. To approach TAMP for approval of the above proposed Draft rationalized tariff of Storage Charges as per the directive issued by MoS provided under its letter dated 11.07.2018. Also to send the submission of AKBTPL vide letter dated 01.02.2019 to TAMP along with Tariff proposal for storage.

iii. The proposed Rationalised Tariff for storage will be effective from 11.07.2018.

iv. The proposed Rationalised Tariff for storage will be reviewed after one year from date of Notification i.e the proposed tariff will be effective for initial period of one year or approval of revised tariff, if any, post review whichever is later

v. Confirmed the above minutes

ANNEXURE – 74

MINUTES OF THE BOARD MEETING HELD ON 20.10.2014

36. Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek on BOT Basis – Upfront Tariff for Storage - reg.

36.1 The proposal was taken up for discussion and consideration.

36.2 To a query from Shri M.L. Bellani, it was clarified that as mentioned at para-14 of the Agenda Note, the extant proposal was not similar to that of 'Development of 13-16 Multipurpose Cargo Berths', as approved tariff for Dry Bulk Terminal was based on the assumptions and calculations to meet with the required revenue requirements.

36.3 After deliberations, the Board decided to forward the proposal of fixing of upfront tariff for storage to TAMP for approval.

Resolution
300

Resolved to forward the proposal of fixing upfront tariff for storage to the TAMP for approval.

Dy.Ch
FA&CAO
C/E
20/1/15

महापत्तन प्रशुल्क प्राधिकरण
TARIFF AUTHORITY FOR MAJOR PORTS
चतुर्थ तल, भण्डार भवन, मुजावर पाखाडी रोड, माझगांव, मुंबई - 400 010.
4th Floor, Bhandar Bhavan, Muzawar Pakhadi Road, Mazgaon, Mumbai - 400 010.
Tel. : 2379 2000, 2379 2008 Fax : 022-2375 7879, E-mail : tariff@tariffauthority.gov.in, Web : http://www.tariffauthority.gov.in

No. TAMP/42/2009-KPT
8 January 2015

To,

The Chairman,
Kandla Port Trust,
Administrative Office Building,
Gandhidham,
Kutch - 370 201.

Dy CE
SEC
Dy.SEC
M/s Adani
20/1/15

सामान्य प्रशासन विभाग
आवक नं 274
दिनांक 20/1/15
कंडला पोर्ट ट्रस्ट

Subject: **Proposal from the Kandla Port Trust for amendment to approve upfront storage charges fixed for the Dry Bulk Terminal to be operated by M/s.Adani Kandla Bulk Terminal Private Limited at Tekra near Tuna at Port of Kandla fixed vide Order No.TAMP/42/2009-KPT dated 17 August 2010.**

Sir,

This has reference to Kandla Port Trust (KPT) letter no.EG/WK/4604/XI/Part-II 234 dated 26 November 2014 on the subject cited above.

2. The request made by the KPT for amendment to the upfront storage tariff fixed by the Authority for the dry bulk terminal off Tekra near Tuna at the KPT vide tariff Order No.TAMP/42/2009-KPT dated 17 August 2010 was placed before the Authority for its consideration. In this regard, I am directed to convey the following:

(i). The above tariff Order has been passed by the Authority based on the proposal of the KPT and after following the prescribed consultation process with the relevant stakeholders, including M/s.Mundra Port and Special Economic Zone rechristened as M/s.Adani Port and Special Economic Zone Ltd., as per the tariff policy guidelines of Government.

(ii). The Authority has passed a reasoned speaking Order No.TAMP/42/2009-KPT dated 17 August 2010 approving upfront tariff for Dry bulk terminal at Tuna near Tekra. As regards the point made by the KPT for amendment to the storage charge approved by the Authority, the following paragraph 11 (xi) from the said Order is reproduced below:

"As per the norms for a multipurpose berth, Storage charge is leviable for storage of cargoes at the transit area beyond the allowable free period of 5 days for import cargo and 15 days for export cargo. The revenue requirement of Rs.1168.70 lakhs (5% of Rs.23374 lakhs) towards storage charges has to be met from the cargo that may remain after the permitted free period of 5 days for import cargo and 15 days for export cargo. The port had initially proposed storage charges at the rate of Rs.9.75 per ton per day or part thereof for the first 30 days on the cargo that may remain in the transit area after the admissible free period with escalated rates for the subsequent slabs. As it was found that the demurrage rate proposed by the port would far exceed the revenue requirement, KPT was advised to carry out a dwell time analysis. The Port, though expressed its inability to carry out such an exercise, has furnished a revised calculation vide letter dated 14 July 2010 based on the presumption that 60% of the cargo will be evacuated within the free period and balance 40 % will stay beyond the free period, of which the majority will be cleared within ten days after the free period. As per the revised calculation, of the 14112000 tons of cargo proposed to be handled at the terminal, only 5644800 tons (40% of 14112000 tons) will be subjected to the payment of demurrage charges. The revenue requirement of Rs.1168.70 lakhs will be met if these 5644800 tons of cargo gives on an average revenue of Rs.20.70 per ton. Presuming that the balance cargo remains in the transit area on an average for 10 days, the revenue requirements can be met by levying a storage charge of Rs. 2.07 per ton per day on the cargoes lying at the transit area for the first 10 days after the free period. Some cargo may overstay even beyond the said period of ten days. As a deterrent to such over stayal, it is necessary to prescribe demurrage charges at higher rates. This Authority, therefore, approves a levy of Rs. 2.07/-, Rs. 4.14/- and Rs.6.21/- per tonne respectively for storage between 11th day to 20th day, 21st day to 30th day and beyond 31st day in respect of cargoes remaining in the transit yard after the prescribed free period."

Thus, it can be seen that the storage charge approved by the Authority is based on the assumptions and parameters then furnished by KPT in its letter dated 14 July 2010 while processing its upfront tariff proposal. The detailed basis for arriving at the approved storage charge is dealt with in the said Order.

(iii). (a). The KPT while seeking amendment to the storage charge approved by the Authority for Dry Bulk terminal at Tekra vide Order dated 17 August 2010 has drawn reference to a separate proposal filed by it letter no.EG/WK/4604/XI/Part-II/234 dated 26 November 2014 for review of storage charge approved for berth nos.13th to 16th approved by the Authority in its Order No.TAMP/35/2008-KPT dated 14 October 2008. In this context, it is relevant to state that the proposal of KPT dated 26 November 2014 flows from decision taken in the meeting convened by Joint Secretary (Ports) on 15 May 2014 which was communicated by the MOS vide its letter No.PD-11015/3/2012-PD-IV dated 13 June 2014 which required the KPT to file a proposal for review of storage charge. The decision taken by the MOS in the said meeting was only with reference to the 13th to 16th cargo berth and not with reference to any other project.

(b). Moreover, the KPT has also in its proposal admitted that the matter referred by it for review of storage charge for dry bulk terminal at Tuna is not similar to the storage charge approved for berth nos.13th to 16th. As rightly pointed by KPT, storage charge for Dry Bulk Terminal approved by the Authority in the Order dated 17 August 2010 is based on the cargo evacuation pattern and dwell time furnished by KPT i.e. 60% of the cargo will be evacuated within free period and balance 40% will stay beyond free period of which the majority will be cleared within 10 days after free period. Adopting these parameters, the storage charge was computed which has been elaborated in para 11 (xi) of the Order.

(c). Thus, in view of the above position, the reference drawn by KPT to its proposal for review of storage charge for berth nos.13th to 16th and seeking review of storage charge for dry bulk terminal at Tekra is not found relevant.

(iv). The tariff Order No.TAMP/42/2009-KPT dated 17 August 2010 passed by the Authority fixing upfront tariff for Dry Bulk Terminal at KPT is a speaking Order following the "Guidelines for upfront tariff setting for PPP Projects at Major Ports, 2008" announced by the Government of India and after following the due consultation procedure. The relevant stakeholders including M/s.Mundra Port and Special Economic Zone Ltd. rechristened as M/s.Adani Port and Special Economic Zone Ltd. which formed the consortium M/s.Adani Kandla Bulk Terminal Private Limited (AKBTPL) for this project were also consulted in the tariff proceeding before passing the said Order.

(v). It is further relevant here to mention that the bidding process has been done by KPT based on the notified upfront tariff dated 10 August 2010 and the Concession Agreement has also been signed between KPT and AKBTPL on 27 June 2012. The Concession agreement entered between KPT and the AKBTPL for developing the dry bulk terminal includes the upfront tariff notified by the Authority.

(vi). As per Clause 2.8 of the upfront tariff guidelines of 2008 once the tariff caps are fixed they are only subject to indexation. The 2008 guidelines do not provide for review of the upfront tariff already determined for the projects that are already bid out. Review of storage charges after the project is bid out will tantamount to review of tariff in a post bid scenario.

Upfront Tariff Guidelines 2008 do not provide for review of upfront tariff already fixed after the projects are bid out. Thus, the Authority does not have mandate to review any upfront tariff item in the post bid scenario.

(vii). The AKBTPL and KPT have entered into Concession agreement for developing dry bulk terminal off tekra near Tuna outside Kandla Creek at Kandla Port on BOT basis on 27 June 2012. The Article 8.1.2 of both the license agreements states as follows:
"The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Tariff or other relief from the Concessioning Authority or any Government Instrumentality, except in accordance with the express provisions of Agreement. The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error of facts, assumptions or projections in the Tariff notification issued by TAMP and agrees that the Concessioning Authority shall not be liable for the same in any manner whatsoever to the Concessionaire."

Thus, as per the relevant clause of the license agreement entered by KPT with the AKBTPL, the AKBTPL is not entitled to any revision of tariff or other relief either from the KPT or from any Government Instrumentality.

(viii). The request made by the KPT vide its letter dated 26 November 2014 is found to be beyond the scope of the Guidelines for upfront tariff setting for PPP Projects at Major Ports, 2008.

(ix). The rates fixed by the Authority are at ceiling levels; the operator can charge at lower levels, if he so desires based on commercial consideration. As far as payment of revenue share on the ceiling rates, the KPT and the operator can mutually come to an agreement, and sort out the problem, if any.

Yours faithfully,

(Anuradha H. Sharma)
Director

File No.PD-13/1/2018-PPPCell 392 564

File No. PD-13/1/2018-PPP Cell
Government of India
Ministry of Shipping

ANNEXURE-76

Transport Bhawan,
New Delhi-110001
Dated: 11.07.2018

To,

1. All Chairmen, Major Ports and CMD KPL
2. Member (Finance) TAMP
3. MD, IPA

Subject: Stressed PPP Projects regarding.

Sir,

I am directed to say that over the years, it has been observed that in spite of due diligence and caution at the time of conceptualizing PPP projects from various perspectives, the survival of some of the PPP projects in Major Ports are at risk due to various reasons that were either not foreseen or those were beyond the control of the Concessioning Authority/ the Concessionaire. Some of the main reasons for this situation are aggressive bidding, the optimistic projections with regard to volumes and charges, inadequate availability of rakes from Railways, unforeseen dynamic changes in the business conditions and absence of flexibility in provisions of concession agreement to overcome such dynamic changes. Some of the PPP projects are either being operated under stress or have been abandoned/terminated, leading to avoidable litigations and if such scenario continues, the Major Ports may not be in a position to attract adequate private investments which would have adverse impact on the growth of port infrastructure in the country.

132

2. These issues have been raised in various meetings and accordingly, considering the imprtance of issue, a Committee under the Chairmanship of Chairman IPA was formed on 28/12/2017 to take timely decision on port issues such as MGT, Permissions, port charges, storage charges etc. of PPP users.

3. The committee, after detailed examination of various issues including the issue of storage charges faced in the PPP projects in various Major Ports, submitted its reports on 4.4.2018 to the Ministry(Annexure-I). Besides proposing measures for removal of stress, the Committee recommended the following criteria for classification of a PPP project as 'Stressed Project':-

(a) The project is sub-optimally utilized as evidenced by the actual cargo handled by the operator during two preceding Financial years being less than 70% of the projection as per DPR/Feasibility report forming part of the bid document and

(b) Project SPV incurring cash loss continuously for two preceding financial years and

SE(D)

565 (c) That the losses incurred by concessionaire has caused atleast 50% erosion of its peak Net Worth during the operation period.

4. In respect of projects that are identified as stressed projects due to abnormal storage charges, the committee suggested the following option for rationalization of storage charges levied at the DBFOT terminals to make them competitive with neighbouring Non-Major Ports which are run by private organisations:

To extend the free period depending on the local conditions with a view to optimize the capacity utilization of the berth with periodical review duly ensuring the following:

(i) No Storage Charges and hence no Royalty if cargo is cleared within the free period as per executed concession agreement;

(ii) If the cargo is cleared after the expiry of free period as per executed concession agreement but within the extended free period, no storage charges will be there but the concessionaire shall pay Royalty equal to 1% of ARR; and

(iii) If the cargo is cleared after extended free period, concessionaire shall pay Royalty equal to quoted percentage on actual storage charges recovered or 1% of ARR whichever is higher, for the period beyond the extended period.

5. Further, a committee under the chairmanship of AS&FA, MoS along with JS(P) and Chairmen of DPT, VPT & KoPT, was constituted vide letter No. PD-13/26/2015-PPP Cell dated 21.05.2018 of MoS for examination of IPA Report for suggesting future course of action. The Committee examined the report of IPA and also took note of the following aspects:

(i) The norm of 1% to 5% of revenue towards storage charges out of the gross revenue from handling charges as per 2008 TAMP guidelines.

(ii) The case of M/s.VGCBPL at Visakhapatnam Port in which, the %of storage charges collected was much higher than 1% that was considered while notifying the tariff as per the TAMP Guidelines, 2008

(iii) The actual revenue realized from storage charges is very high compared to the norm of 1% prescribed by the TAMP.

(iv) In situations where the demand of the cargo comes down, the telescopic increase of storage charges beyond free time is acting as deterrent for the importers leading to migration of cargo to the non major-ports offering more free time.

(v) The norm fixed by TAMP anticipating 1% revenue towards the storage charges out of gross revenue from handling charges was based on certain assumptions regarding the dwell time of the cargo and such situation in actual practice changes based on the market condition, availability of rakes, storage space at importers premises etc.

(vi) The underlying assumption of fixing the dwell time may be appropriate for a certain period of time but will not be static throughout the concession period. The situation dynamically changes depending upon the market conditions and availability of logistics.

(vii) As a result of higher storage charges if the cargo continues to get diverted to the neighbouring competing Ports, the income generation from the project has been coming down making the asset unviable because of reduction in throughput. This is affecting not only the revenue share but the revenue from the vessel related charges is also decreasing for the Concessioning Authority.

(viii) The issue of storage charges and reduction in throughput has also resulted in inefficient and reduced usage of mechanized facilities created with a huge investment under PPP mode and has increased the handling of such cargoes at other semi-mechanized/non-mechanized berths defeating the very purpose/objective of mechanization and is also leading to intervention by regulatory agencies from environmental perspective.

(ix) In a similar issue in case of a PPP project i.e VGCBPL at VPT on a reference of the matter by Ministry, a report was submitted by TAMP vide letter no. TAMP/64/2015-VPT dated 11.09.2015 in which it was recommended that "With the approval of Ministry of Shipping for rationalization of storage charges the VPT can formulate a well analyzed proposal in consultation with the VGCBPL for downward revision of the storage charges in such a way as to achieve the Annual Revenue Requirement (ARR) of Rs. 1.37 crores considered in the tariff order of November, 2009 passed by TAMP for prescription of existing storage charges at VGCBPL and file the proposal before TAMP. While the VGCBPL levies the storage charge at the reduced rate to be approved based on the proposal of VPT, the revenue share payable by the VGCBPL to the VPT at the agreed percentage should not be less than the revenue share calculated on the ARR of Rs 1.3706 cr in November, 2009 order" 12

(x) The committee also noted that the clause 21.(9) of the Concession Agreement, has a provision that "Amendments, modifications or alterations" to the terms and conditions of the agreement shall be valid if the same be in writing and agreed to by the parties.

The Committee submitted its views/ recommendations on the issue of Storage Charges on 07.06.2018.

6. The Committee headed by AS&FA, MoS is of the view that wherever such issue of abnormal storage charges emerges in stressed projects as defined in Para 3 above, the Ports may approach TAMP under the provisions of "Amendments, modifications or alterations" to the terms and conditions of the concession agreement with an appropriate

proposal for rationalization of storage charges in consultation with concessionaires so as to achieve the ARR as per the TAMP guidelines/notification. TAMP has to consider such proposals on merit. The Committee also recommended review of the situation by the Concessioning Authority periodically for optimum utilization of the facility created.

7. The Major ports are, therefore, directed to adopt the aforesaid procedure including review of the situation periodically for optimum utilization of the facility created.

8. Other issues:

In respect of the other issues which are contained in IPA committee report namely, on license fee, flexibility in operations, surrendering of partial project facility, payments on termination to concessionaires/lender, actual project cost, stressed project due to issues relating to migration from tariff guideline 2005 to tariff guidelines 2013 and termination payment relating to 13th and 15th berth at Deendayal Port, AS&FA committee accepted the IPA committee recommendations, therefore, the ports are directed to take actions as per the recommendations contained in IPA report.

9. This issues with the approval of Minister, Ministry of Shipping.

Yours faithfully

(Narender Kumar)
Under Secretary to the Govt. of India
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E-mail: narender.kumar61@nic.in

Copy to:

i. PS to Hon'ble Minister (Shipping)
ii. OSD to Hon'ble Minister (Shipping)
iii. PS to Hon'ble Minister of State for Shipping (PR)
iv. PS to Hon'ble Minister State for Shipping (MM)
v. PS to Secretary (S)
vi. PS to AS&FA (S)
vii. PS to Additional Secretary (S)
viii. PS to JS(P)
ix. JS(SM)/ Adv(E)/Adv(Stat.)
x. Dir(SS)/(AKS)/(AC)/CO(P.Bali)

Report of the Committee Chaired by Chairman, IPA on the issues pertaining to Stressed PPP Projects

Chapter 1 : Background

In the past decade, Government of India invited private investment into Major Port Sector and several projects were awarded under DBFOT basis across the major ports in the country. In spite of due diligence and caution at the time of conceptualizing these projects from various perspectives, the survival of some of the projects is at a risk due to various reasons that are either not foreseen or those are beyond the control of the parties. Some of the main reasons for this situation may be the aggressive bidding and the optimistic projections with regard to volumes & charges, unforeseen dynamic changes in the business and absence of flexibility to overcome such dynamic changes in the Concession Agreements.

On examining the issue, it was noticed that these projects are either being operated under stress or have been abandoned / terminated, leading to avoidable litigations. If this scenario continues the Major Port Sector may not be in a position to attract private investments in a big way which would have adverse impact on the growth of Port Infrastructure in the country.

Ministry of Shipping vide their latter dated 04/01/2018 advised IPA to examine the issue of stressed projects at Major Ports. A committee was constituted for the purpose which deliberated on the issue in the meetings held for the purpose. It was observed that in certain cases solution may not be available within the framework of executed concession agreements and it may be necessary to consider modifications in certain provisions to save the projects.

This report is in the above background keeping in view the deliberations at the meetings of the Committee

382

130

Chapter 2 : The Framework

The Committee, on having gone through the main features of the projects and the issues understood to be responsible for the stress, felt that in certain cases solution may not be available within the framework of executed concession agreements and it may be necessary to consider amendments in certain provisions to save the projects. Accordingly, committee has not ruled out considering a solution if it is unavoidable to save the project simply because it may require an amendment to the provisions of executed concession agreements. In order to ensure that no amendment is in favour one party to the concession agreement at the cost of other, it is envisaged that any change shall be with mutual consent only and wherever considered necessary shall require the consent of lenders as well.

Revisiting of already executed concession agreements needs to address various concerns such as loss of sanctity of contracts and undermining competitive bidding principals applied in the initial award of project due to bilateral nature of the amendments. In order to handle the likely opportunistic behaviour of private player through grant of unfair benefits, any amendments should not be to ensure the envisaged return on investment by the private player but only to save the project from continuous losses leading to closure of the same. Thus, renegotiation should be to the extent required for survival of the project i.e. it should be a sort of course correction activity.

Kelkar Report on revisiting of PPP Model also states that Renegotiation of Contracts should be taken up only if:

(i) Evidence that the project distress is material and likely to result in default under the concession agreement at some future point should it continue;
(ii) Not caused by the private party and likely to cause adverse outcomes for the government and/or users of the concession assets;
(iii) Evidence that a renegotiated concession agreement is likely to have direct cost implications for the government that are less than the financial outcomes of doing nothing;
(iv) Likely to have social benefits or avoided costs that provides better long-term outcomes; and
(v) Not materially different in terms of risk allocation to the Government of India.

It also says that Renegotiation should not be taken up in case of

(i) Any event of distress that was foreseeable at the time of financial closure;

(ii) Any event that would affect the concessionaire just as any other company in its ordinary course of business (for example general changes in law);

(iii) Any impact arising from assumptions made or risks taken by the concessionaire in preparing its bid;

(iv) Any impact arising directly or indirectly from the performance, action or inaction of the concessionaire; and

(v) Any failure of any associated party for concessionaire to perform or provide finance to the concessionaire.

The Committee is of the view that in order to have a uniform approach, circumstances under which a project shall be classified as a Stressed Project for taking remedial steps should be clearly defined with minimum subjectivity based on quantifiable parameters. Accordingly, the Committee proposes criteria for classification as a stressed project as follows:

The alteration in terms and conditions of Concession Agreement may arise due to aberration in one or more of the various parameters of physical and financial performance such (i) Lower Turnover/ Revenue (ii) Higher Capital cost of the Project(iii) Delays in approvals/ clearances by Government (iv) Non-availability / delay in providing supporting infrastructure (v) Delayed/ Inadequate financial arrangement (vi) Variation in contractual specifications caused by changed scenario and (vii) Disagreement on causes and effects of the above variations. However the impact of all these is invariably reflected in project capacity utilisation and loss from project operations. The committee, therefore, recommends following criteria for classification of a project as "Stressed Project":

a) The project is sub-optimally utilised as evidenced by the actual cargo handled by the operator during two preceding financial years being less than 70% of the projections as per DPR/ Feasibility Report forming part of the Bid Document and
b) Project SPV incurring cash loss continuously for two preceding financial years and
c) That the losses incurred by Concessionaire has caused at least 50% erosion of its peak net worth during the operation period.

Chapter 3 : The Issues related to Stressed Projects

Committee received notes from major ports on issues perceived to be responsible for causing stress, the stressed projects along with possible solutions for removal of the stress. Details about such projects are available in next chapter. The issues, proposed solution and views of the committee on the same are given hereunder:

(1) **Abnormally High Storage Charges:**

It was brought out by Visakhapatnam Port to the Committee that one of the predominant reasons for stress of PPP projects is the abnormal storage charges at PPP terminals which has a significant impact on the handling cost resulting in underutilization of terminal capacity which in turn have an adverse effect on revenue earnings, viability of the project etc. A study of this issue showed that free storage period of 5 to 15 days is envisaged in concession agreements based on the conditions prevailing at the time of conceiving the project whereas in actual practice it has been observed that the average dwell time is around 30 to 45 days. The storage charges worked out on this basis as % of overall handling charges are much higher than the envisaged 1% to 5% in the policy guidelines on Annual Revenue Requirement (A.R.R.) notified by TAMP vide notification Dt.26th February 2008.

This scenario is resulting in migration of the traffic to the nearby Private Port, where the free storage period is 60 days leading to very low capacity utilization of the terminal. It was stated that substantial improvement in capacity utilisation can be achieved through rationalisation of storage charges.

The committee considered following options for rationalisation of storage charges levied at the DBFOT Terminals:

a. Considering extension of free time, duly ensuring that the loss of revenue share by Port for such extended period (beyond the free period envisaged in the agreement), shall first be compensated completely (as per the agreed revenue share in the concession agreement) from the revenue generated out of Storage Charges during initial days and after that only, the Concessionaire will be entitled for his share of revenue. The Port Trust Board may decide the free time depending up on the local conditions by reviewing periodically.

b. To follow the suggestion of TAMP that was given in respect of VGCB terminal of VPT for rationalisation of Storage Charges.

c. To continue the free period as per the concession agreement and to collect the storage charges as per the first slab dispensing the telescopic rate.

d. To extend the free period depending on the local conditions with a view to optimise the capacity utilization of the berth with periodical review duly ensuring the following:

   (i) No Storage Charges and hence no Royalty if cargo is cleared within the free period as per executed concession agreement.

   (ii) If the cargo is cleared after the expiry of free period as per executed concession agreement but within the extended free period, no storage charges will be there but the concessionaire shall pay Royalty equal to quoted % of 1% of ARR.

   (iii) ~~If the~~ cargo is cleared after extended free period then Royalty as per (i) above till the extende~~d period~~. For subsequent period, concessionaire shall pay Royalty equal to quoted % on actual storage charges recovered or 1% of ARR whichever is higher.

After deliberations, the committee is of the view that the option at (d) above appears to be ideal for rationalisation of storage charges.

(i) Accordingly, Government, in consultation with the Tariff Authority for Major Ports (TAMP), may make such orders, not inconsistent with the basic features of 2008 Guidelines as may be necessary for removing the difficulty as per para 1.4 of 2008 TAMP Guidelines.

(ii) In order to carry out the above modification under Article 21.9 of the Concession Agreement covering "Amendments, Modifications or Alterations", while moving the proposal, the consent for the modification shall be obtained in cases where the modification is not at the request of concessionaire.

(iii) The stressed projects may be considered on case to case basis and appropriate need-based extension in free period may be considered.

28

(2) **Licence Fee:**

Another issue being faced is of License Fee payable by concessionaire to port as licensee of project site and port assets. The committee was advised that it is due to certain changes made to the model concession agreement at the Port level. The related facts are:

a. The clause relating to License Fee envisaged in the MCA is ***"The Concessionaire shall, as consideration for the use, in its capacity as a bare licensee of the Project Site and the equipment comprised in the Port's Assets, made available in accordance with Article 2.427, pay to the Concessioning Authority the sum of Rs [•] (Rupees [•] Only) (as specified in the bid documents) (the "License Fee"). Such amount shall be paid by the Concessionaire __________ (as agreed upon in lump sum or in half yearly / yearly installments)".***

b. It was informed that in some of the Concession Agreements, an escalation of 2% per annum was also included to the above sum payable as the Licence Fee where agreed to be paid in instalments. Besides this the clause was modified in certain concession agreement that ***the concessionaire shall pay such license fee in advance every year till the end of license period <u>as per schedule of Rates prevailing from time to time</u> and first of such payments to be made upon entering into the concession agreement"***

c. When the concessionaires objected for such calculation (as per schedule of rate prevailing from time to time) of license fee for PPP projects, the issue was referred to TAMP by VPT to examine whether the revision as above was factored while notifying the tariff, if not whether it can be considered for revision of tariff duly considering the quantum of escalation for every five years.

d. TAMPvide its letter dt.27.12.2017, clarified that a fixed sum arrived on the basis of the SoR prevailing during the period of Bid with 2% escalation every year was only considered for fixation of Tariff but not the SoR prevailing from time to time. TAMP further clarified that no upward revision can be considered on account of this factor and the only factor for reviewing Tariff shall be the WPI, as per the 2008 Guidelines.

e. Similar issue prevailing at Chennai Port Trust was also discussed where the concessionaire is objecting for revision of SOR from time to time and invoked arbitration clause.

f. The revised MCA approved by the Cabinet recently the clause is very specific that licence fee may be increased by certain percentage every year and no periodical revision of SOR is envisaged. The committee felt that the spirit of this provision should also be kept in mind in resolving the issue of licence fee in case of the earlier projects.

On this issue, the following options come up for consideration of the committee: -

a. The parties having signed the concession agreement with the modified clause mayinvoke the Dispute Resolution Clause provided in the Agreement and settle the matter by availing assistance of expert or arbitration.
b. Keeping in view the clarification of TAMP, that no review of tariff for upward revision of the same considering the escalation of license fee as per SOR prevailing from time to time is possible, the parties may amend the clause/article in line with TAMP clarification by confining the license fee to 2% escalation every year.

The committee observed that "revision of license fee as per Schedule of Rates from time to time" was incorporated in Bid Documents and accordingly risk of upward revision of SOR was known to concessionaire at the time of bidding and accordingly Concessionaire must have factored it while quoting Revenue Share. Accordingly, the above option should be taken up only in those cases where the increase in license fee is found to be unaffordable and necessary to remove stress.

Further it was observed that the increase in license fee on account of increase in SOR, where prescribed in executed concession agreement, is not a matter of dispute but in projects where relief in license fee is to be considered under above circumstances the procedure similar to Dispute Resolution i.e. Amicable settlement/ Assistance of Expert may be employed.

(3) **Flexibility in operations:**

The committee was informed that due to unforeseen dynamic changes in the business, the optimistic conditions laid at the stage of conceptualization, the absence of provision for flexibility in operations etc, had adversely affected the viability of project. There are certain projects which are under stress and rendering the impossibility of running the terminal. In these cases, there is neither concessionaire event of default nor concessioning authority event of default.

There is no provision enabling the Bidder to exit within the Concession period, except by termination for the event of default of Concessionaire / Concessioning Authority or force majeure. However, such provision exists in the NHAI Agreements. It was noted that provision for such Exit Clause as well as the Clause of mutual termination would enable to overcome certain constraints being faced by the stressed projects. If a provision for mutual termination and a first right of refusal to the Concessionaire in the re-bidding is likely to bring alive the stressed asset.

Committee observed that in Mumbai Port such issue is being dealt with for which cabinet approval is awaited. If approved the same model may be adopted for PPP projects in all Major ports.

Alternatively, a procedure similar to the one prescribed for Migration of BoT operators covered under Guidelines for Regulation of Tariff at Major Ports, 2004 notified on 31 March 2005 (2005 Guidelines) to Guidelines for Determination of Tariff for Projects at Major Ports, 2013 notified on 30 September 2013 (2013 Guidelines) may be employed in such circumstances.

(4) **Surrendering of partial project facility:**

The project facilities such as storage yard, etc., allotted to PPP projects as a part of project facility is not fully utilised and the Operators are proposing to hand over such unutilised facility to the Port authorities.

On this it was opined that by taking back of such facility, if Ports are in a position to earn more revenue by other means, then Port may consider to take over the same subject to no relaxation to the concessionaire in respect of MGT and performance parameters on this count.

(5) **Payments on termination to Concessionaire / Lenders:**

It was brought to the notice of committee that there is no provision in the Concession Agreement for payment of compensation to the Concessionaire / Lender, consequent on termination during construction phase. It was proposed that the parties (port and concessionaire) should either resolve any dispute / conflict as per the remedy provided in the Contract or by invoking the Dispute Resolution Article in the absence of express remedy in the Contract. In case Concessionaire / Lender fail to exercise the options available as per concession agreement, the following was suggested:

i) The project assets are to be valued by appointing a Consultant mutually agreed upon by both the Concessionaire/Lender and Concessioning Authority.

ii) The value determined is to be considered as equity / debt of the Lender in the project.

iii) Port may invest the balance amount for completion of the project by infusing amount by way of equity / debt, either by its own funds or by way of opting for loan.

iv) After completion of the project, the Lender may be given an option to quit by disposing his equity if he so desires.

The committee observed in case of termination due to concessionaire Event of Default, the revised MCA of port sector and also MCA of NHAI for BoT(Toll), provides for Termination Payment only after completion of project i.e. if COD has been achieved. However, it is understood that some milestone - based termination payment is under consideration of NHAI in such cases. Accordingly, committee may consider the issue after a decision is taken by NHAI.

(6) **Actual Project Cost:**

It was noticed that the "Actual Project Cost" was defined in the Concession Agreement as

"the actual Capital Cost incurred by the Concessionaire on the Project and / or the project facilities and services as certified by the Statutory Auditor and if the same exceeds the estimated Project cost and / or does not form part of the financing plan submitted prior to financial close, the amount of estimated Project Cost or in the financing plan as the case may be increased by the amount(s) approved in writing by the Concessioning Authority."

In some cases, it was noticed that the concessionaire is not obtaining prior approval from the Concessioing authority for increase in project cost. Further, the Concessionaire is also availing the debt from the lender / banks based on increased project cost. Therefore, in the event of termination of project, the debt due to the lenders may be more than the debt indicated in the financing plan approved by the authority. It was suggested to the committee that if the concessionaire does not obtain written permission for change in Project cost, in such cases the lowest of the following may be considered as Project Cost:

a) The Project Cost as per TEFR.
b) The Project Cost as per Financing Plan approved by the authority.
c) The actual Project Cost as certified by the Auditor.

It was observed that in existing projects all three costs are already known and any change at this stage which may affect termination compensation may not be desirable as it directly affects the Lenders who are not a party to Concession Agreement.

(7) Stressed Projects due to issues relating to Migration from Tariff Guideline 2005 to Tariff Guidelines 2013:

The committee proposes that such projects may be dealt with as per migration guidelines prepared by the Ministry **(Annexure 1).**

(8) Termination Payment relating to 13 th and 15th Berth at Deendayal Port

The committee asked the port to submit in detail the circumstances under which termination payment has not been made in these projects. The detailed position as brought out in the notes received from DPT is given in next chapter.

Keeping in view the position the Committee is of the view that DPT has taken necessary steps (i) as per provisions of concession agreement and (ii) keeping in view the port's interest.

Chapter 4 : The Projects Details

Projects at Visakhapatnam Port

The performance of PPP Terminals at VPT with reference to the storage charges stipulated in the concession agreements of these terminals is as follows:

Name of the terminal	Capacity MMTPA	Traffic handled 2014-15 MMTPA	Traffic handled 2015-16 MMTPA	Traffic handled 2016-17 MMTPA
VGCB	10.18	7.12	6.89	4.25
EQ-1	6.41	1.01	0.85	NIL
WQ-6	2.08	0.002	0.13	0.41
EQ-1A	7.36	-	--	--

The cargo at VGCB and EQ-1 has come down from 7.12 MT to 4.25 MT and from1.01 to nil at the two terminals respectively as compared to 2014-15 when storage charges were same. This indicates that some other factors are also responsible for sub-optimal cargo handling at these terminals.

A comparative scenario of storage charges at the PPP terminals in VPT as compared to the neighbouring private port "Gangavaram Port Limited" is as under:

Port/berth	Handling charges/ tonne (Rs.)	Free storage period (days)	Storage charges per tonne (Rs.)			
			If cargo remains for 10 days	If cargo remains for 20 days	If cargo remains for 45 days	If cargo remains for 60 days
VPT/VGCB	168.21	10	--	30.20	231.70	352.60
VPT/EQ-1	199.79	5	10.10	70.80	273.05	394.40
VPT/WQ-6	106.04	5	58.10	226.58	807.33	1155.78
VPT/EQ-1A	172.83	5	6.65	46.60	179.85	259.80
Gangavaram	200*	60-120	nil	nil	nil	nil

a) The VGCBPL terminal at VPT (Import Coal Terminal) that commenced its commercial operations from 8.4.2013

b) This project was envisaged with a daily unloading capacity of 42000 to 70000 metric tons depending on the size of vessel, with a free storage period of 10 days, and with an anticipated availability of ten railway rakes per day.

c) Beyond the free storage period, the storage charges are telescopic which doubles for every five days from the eleventh day starting from Rs.2.01/- per ton per day and increasing up to Rs. 8.03/- per tonne from 21st day.

d) Longer storage period due to non-availability of sufficient Railway rakes for evacuation of cargo as envisaged at the time of Concession Agreement.

e) Economic and Financial conditions of the customers, Storage infrastructure at the customer's premises, etc., also resulting in longer storage period.

f) As per the TAMP Guidelines on Annual Revenue Requirement (A.R.R), the coal handling terminal has to earn 98% revenue through handling charges, 1% revenue through Storage Charges and 1% towards miscellaneous charges whereas the revenue from storage charges at the VGCBPL terminal in VPT is around 15 to 25 percent. which is very high

g) On referring the issue, TAMP also recommended for rationalization of storage charges vide their letter Dt. 11.9.2015 and suggested the following:

h) "With the approval of the MoS for rationalisation of Storage Charges, VPT can formulate a well-analysed proposal in consultation with VGCBPL for downward revision of Storage Charges in such a way to achieve the A.R.R. of Rs.1.37 Crores considered in the Tariff Order of November, 2009 passed by TAMP for prescription of existing Storage Charges at VGCBPL and file the proposal before TAMP. However, it may be ensured that the agreed percentage should not be less than the revenue share payable to VPT calculated on the A.R.R. of Rs.1.37 Crores in November, 2009 Order".

i) While conceiving the project, a mix of Handymax, Panamax, capsize vessels were considered and accordingly project facilities have been worked out. Whereas, on commencement of commercial operations practical issues such as, increase in number of cape size vessels handled with very short intervals, non-availability of rakes, lack of sufficient infrastructure at customer premises etc., have come across and it has become a challenge to overcome these practical difficulties.

Project at Deendayal Port:

Adani Kandla Bulk Terminal (P) Ltd.

1. In order to meet the gap between the Capacity of port in terms of handling Dry Bulk cargo and projected traffic, Deendayal Port Trust had embark upon to develop a Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek to handle the Dry Bulk cargo on BOT basis.
2. Deendayal Port has entered into Concession Agreement with M/s Adani Kandla Bulk Terminal Pvt. Ltd (AKBTPL) (Concessionaire), on 27.06.12 to develop the subject project on BOT basis.
3. Consequent upon fulfilling of all Conditions Precedent (CPs) by both the parties (KPT & AKBTPL), KPT had awarded the Concession of the Project to M/s AKBTPL on 19.12.12.
4. M/s AKBTPL has stated the commercial operation and obtained the Completion certificate from Independent Engineer on 17.03.2015.
5. Cargo Handled by M/s AKBTPL from Feb'2015 till December 2017.

Year	Cargo Handled (Lac MT)	Revenue (Rs. Crore)	Remarks
2014-15	1.73	-	COD in February 2015
2015-16	16.37	77.56	
2016-17	17.48	99.21	
2017-18	27.89	-	Till December 2017

Issue Regarding the Project:

1. The TAMP vide its order No. TAMP/42/2009-DPT dated 17th August 2010 had approved the Upfront Tariff for the above project based on the Guidelines for upfront Tariff setting for PPP Projects at Major Ports, 2008.
2. After signing the Agreement, on 19.08.2013, M/s AKBTPL had directly approached the TAMP for revision of the approved Tariff, indicating abnormally high storage charges due to faulty assumptions of 60% of cargo being evacuated in first 5 days of free period on the basis of which TAMP order dated 02.11.2010 was passed.

(124)

3. On 26.09.13, TAMP responded to M/s AKBTPL (by endorsing a copy to DPT) that their request for revision of Tariff is found to be beyond the scope of Guideline for Upfront Tariff for PPP Projects of Major Ports,2008. On 20.01.14, M/s AKBTPL submitted to DPT that the approved Tariff for storage charges for the Project are exorbitantly high and can prove to be major deterrent in attracting traffic to the project and requested DPT to pursue the matter along with the storage charges of 13th to 16thberths in general interest of the trade.
4. The Upfront Tariff approved for the project is based on the Tariff Guidelines for PPP projects -2008 approved by the Ministry. As per these guidelines, for fixing the tariff for various services, the Total Revenue Requirement for the project is required to be apportioned in following manner and rates of the individual tariff items under each following group is determined: -

   Tariff Group % of total revenue allocation

   Cargo Handling charges 90%

   Storage charges 5%

   Miscellaneous charges 5%

On referring the historical figures of last three years, if Concessionaire continued to charge the users the storage charges as per TAMP approved ceiling rates and the amount of total storage charges payable by users will become exorbitant as compared to the envisaged revenue requirement (5% of total revenue requirement) for storage in the approved tariff

Concessionaire has offered to pay the Concessioning Authority the 5% of the total gross revenue as per the TAMP norms for apportionment of total Revenuerequirement specified at TAMP 2008 guidelines.

Concessionaire had committed that there would an increase up to 50% in the volume of cargo if rationalization of storage charges would happen. As per the commitment of the Concessionaire, a senility analysis has been made from a 10% to 50 %increase in the volume of Cargo and the projected increase of revenue share has calculated.

Based on the above sensitivity analysis calculations, DPT may have a revenue gain of Rs 25.79 crores in the first year of storage tariff rationalization and Rs 35.88 crores from the second year onwards as per the commitment of the Concessionaire for 50% increase in the volume of cargo.

It is envisaged that with the rationalization of the tariff the concessionaire may achieve the required MGT and the given calculations are also in line with the required MGT.

Berth No. 13

Deendayal Port Trust (DPT), pursuant to a competitive bidding process entered into Concession Agreement on 03.12.2009 for development of 13thMultipurpose Cargo Berth with RAS Infraport Pvt. Ltd (RAS). RAS started the commercial operations from 18.02.2013.

After starting the Commercial operations RAS have handled 66,90,494 Tonne of cargo at 13th Berth, year wise cargo handled till September 2017 is as below.

Year	Cargo Handled (in Tonne)
2012-13	56,000
2013-14	14,46,674
2014-15	13,37,223
2015-16	14,18,184
2016-17	16,21,902
2017-18 (upto Sept-17)	8,10,510
Total	**66,90,494**

Despite handling of 66,90,494 Tonnes of Cargo, RAS has paid Royalty only for two months towards cargo handled by it for 56,000 Tonnes. The outstanding payable by RAS towards Royalty amounts to Rs114.11 lacs.

The act of non-payment of outstanding dues including License Fee and Royalty was considered as an Event of Default of RAS as per Article 15.1 of the Concession Agreement and thereby a Consultation Notice was issued to RAS on 22.08.2014 to cure its underlying Event of Defaults.

In view of the above a proposal to terminate the Concession Agreement was submitted before the board for approval in its meeting held in March 2015.

In a meeting with Ministry held on 20.03.2015, an idea to restructure 13th & 15th Berth in line with the project being restructured at Kamarajar Ports Ltd subject to payment of all outstanding dues by both the Concessionaires of 13th and 15th Berths was suggested.

A Sub-Committee of Trustees to go through the Concession Agreement, to analyse the complex issues involved including outstanding dues, etc., in detail and to suggest suitable remedial measures for a comprehensive proposal to the Board. The Sub-Committee of the trustee in its meeting held on 15.05.2015 recommended the Board to approve restructuring of berth 13 and 15 with the terms which includes payment of all outstanding dues including License Fee and Royalty. The Board of DPT in its meeting held on 08.06.2015 accepted the recommendations of the Sub-Committee of Trustees made during the meeting held on 15.5.2015. The same was intimated to the Concessionaires and Lenders for their consent. Subsequently, RAS and its Lenders had furnished their consent for restructuring.

However, RAS failed to pay the pending License Fees in spite of giving a number of extensions in payment due date.

On 09.06.2016, a joint meeting was held at Ministry and it was decided that principal amount of outstanding License Fee should be paid immediately by RAS and the disputed amount of License Fee and interest may be resolved through Dispute resolution mechanism as laid down in the signed Concession Agreement. As decided in the meeting, RAS was asked to deposit the LF, but again it failed to deposit the same with DPT.

Subsequently the port got legal opinion that a fresh consultation notice is required to be issued before 11.06.2017. Accordingly, a Consultation Notice was issued on 07.06.2017, with 15 days remedial period was issued to RAS & its Lenders; specifying the reasonable details of the underlying Events of Default(s) that has been committed by RAS under Article 15 of the CA. In terms of CA, Consultation Notice, it was requested to the Concessionaire to (i) pay the outstanding amount and (ii) to cure their Events of Defaults within a period of 15 days.

DPT vide its letter dated 17.06.17communicated to Lenders that if before expiry of the remedial period, the Lenders do not make any representation in line with the clause 3.3.1

of the substitution agreement (regarding the intention to substitute the concessionaire by a selectee), it will be deemed that the Lenders have waived their right of substitution and they don't intend to exercise the same. In this regard, DPT did not receive any representation from Lenders within the stipulated time i.e. 15 days from the issuance of consultation notice and hence it was deemed that Lenders do not intent to exercise their rights as per Article 15.4 of the Concession Agreement.

RAS had also invoked Article 19.3 (Arbitration) of the Concession Agreement by its letter dated 6th February 2017, thereby an Arbitral Tribunal was constituted for adjudication of disputes between the parties under the Concession Agreement. The Parties have filed their claim and counter claim before the Arbitration Tribunal. The details of counter claim filed by DPT before the Arbitration Tribunal and the 90% of the Debt due are as under.

Counter Claim of DPT (in Rs)	**90% of Debt Due (in Rs)**
Outstanding Dues = 1,69,24,27,046 Opportunity Loss = 22,71,20,48,200 ***Total claim = 24,40,44,75,246***	183,90,04,471

Since, there were substantial dues outstanding (Rs. 1,69,24,27,046/-; summary of the same as given above) from RAS, before the concession agreement stands terminated as per the Termination Notice dated 01.07.2017, DPT had sought a legal opinion from Senior Advocate Shri Mihir Thakor regarding termination compensation. He in his opinion stated that *"As against this* (i.e. the Compensation payable by DPT to the Concessionaire), *KPT has a huge claim. In the circumstances, there is no reason to pass the resolution as proposed. I would believe that KPT is entitled to get possession of the Project Facilities and Services of RAS as per the terms and conditions of the agreement. Accordingly, KPT should call upon RAS to handover possession of these assets."* Further, he in his opinion has also suggested that *"DPT should take appropriate action to recover possession of the project facilities and would be at liberty to furnish security/deposit money as per clause 17 in the court if necessary".*

By considering the opinion of Senior Advocate, Board of DPT has approved *"to take appropriate action to take over the possession of the Project site, facilities and services from the Concessionaire of 13th berth and in the event of refusal by the Concessionaire to* *handover the peaceful possession of the berth, necessary course of action may be initiated in the matter, as per the Concession Agreement and law of the land".*

Accordingly, at the expiry of the termination notice period (issued by DPT),DPT took over the possession of the berth no 13on 29.09.2017, without paying the Termination Compensation; and there after DPT has started the operations at the berth. With the expiry of the Termination Period (as per DPT's Termination Notice dated 01.07.2017), the Concession Agreement between RAS and DPT stands terminated on 29th September 2017.

Consequently, Lenders of the Project i.e. ICICI, BoI and SIDBI, filed a civil suit before the commercial court Rajkot against DPT and RAS seeking permanent injunction along with the interim relief applications. DPT has filed its reply in the matter and it is pending for adjudication.

Thereafter, the lenders have also filed an application against DPT and RAS & others, before the Debt Recovery Tribunal for an amount of Rs 206,90,93,337.44. DPT is in the process of filing its reply in consultation with its Advocate and the matter is pending for adjudication.

In view of the foregoing and keeping in mind that the matter is sub-judice, and the fact that RAS has no asset or financial credentials, KPT is of the view it may cause serious prejudice to the interest of DPT if it would pay such substantial amounts i.e. 90% of the debt due at this stage.

Berth No. 15

Deendayal Port Trust (DPT), for development of 15th Multipurpose Cargo Berth entered in to concession agreement with JRE Infra Pvt. Ltd (JRE). DPT fulfilled all the Conditions Precedent on its part and handed over the physical possession of the Project Site on 08.08.2011. After JRE fulfilling its Conditions Precedent with delay, on 27.09.2011 the Award of Concession of the Project was issued by DPT to JRE and thereby JRE commenced the Construction activity of berth No. 15.

Subsequently, JRE obtained the Provisional Completion Certificate from the Independent Engineer on 26.08.2013 and started the commercial operations at Berth no 15 from 16.11.2013. JRE failed to complete all the items of punch list within the stipulated scheduled period. Thereby, from 1.11.14 to 15.09.15 the Provisional Completion Certificate for 15 Berth was withdrawn due to non-completion of punch list.

Initially, JRE after taking over the possession on the Project site have paid License Fees for two years. However, JRE has not paid the License Fee as stipulated under article 9.1 of the Concession Agreement, therefore a huge amount of Rs 42,17,61,320 is outstanding towards License Fee including service tax and interest.

After starting the Commercial operations JRE have handled 13,49,337 Tonne of cargo at 13th Berth, year wise cargo handled till September 2017 is as below.

Year	Cargo Handled (in Tonne)
2013-14	49,726
2014-15	2,26,661.45
2015-16	1,11,930
2016-17	6,16,838
2017-18 (upto Sept-17)	3,44,182
Total	**13,49,337**

Despite handling of 13,49,337 Tonnes of Cargo, JRE has not paid any Royalty from start of commercial operation at berth no 15. The outstanding payable by JRE towards Royalty amounts to Rs. 19,97,15,117.

Due to non-payment of outstanding dues, as per the Concession Agreement and non completion of punch list, Consultation Notice dated 08.10.2014 was served upon JRE and its Lenders. However, JRE failed to cure their underlying event of default. Due to non-curing of underlying Event of Defaults by JRE, a proposal to terminate the Concession Agreement of 15th Berth was submitted before the board for approval in its meeting held in March 2015.

Meanwhile, in the meeting with Ministry held on 20.03.2015, an idea to restructure 13th& 15th Berth in line with the project being restructured at Kamarajar Ports Ltd subject to payment of all outstanding dues by both the Concessionaires of 13th and 15th Berths was suggested.

A Sub-Committee of Trustees to go through the Concession Agreement, to analyse the complex issues involved including outstanding dues, etc., in detail and to suggest suitable remedial measures for a comprehensive proposal to the Board. The Sub-Committee of the trustee in its meeting held on 15.05.2015 recommended the Board to approve restructuring of berth 13 and 15 with the terms which includes payment of all outstanding dues including License Fee and Royalty. The same was intimated to the Concessionaires and Lenders for their consent. Subsequently, JRE and its Lenders had furnished their consent for restructuring. However, JRE failed to pay the pending License Fees despite giving extensions in time to pay the same.

Again on 09.06.2016, a joint meeting was held under the chairmanship of Joint Secretary, MoS. During the meeting, on outstanding amount of License Fee, it was decided that principal amount of outstanding License Fee should be paid immediately by JRE and the disputed amount of License Fee and interest may be resolved through Dispute resolution mechanism as laid down in the signed Concession Agreement. As decided in the meeting, JRE was asked to deposit the LF, but again it failed to deposit the same with DPT.

Since JRE have not met with the agreed terms of Repositioning KPT keeping in view the legal opinion approved to initiate the Arbitration as per Article 19.3 of the Concession Agreement.

Subsequently, as per legal opinion, KPT served a Consultation Notice with 15 days remedial period was issued to JRE & its Lenders for payment of the outstanding amount and (ii) to cure their Events of Defaults within a period of 15 days. Further during the meeting held on 17.06.2017 lenders were informed that in line with clause 3.3.1 of the signed substitution agreement lenders are required to make a representation regarding their intention to substitute the Concessionaire by the selectee within 15 days from the issuance of Consultation notice. It was also communicated vide letter of 17.06.2017 to lenders that if they do not make any representation in line with the clause 3.3.1 of the substitution agreement (regarding the intention to substitute the concessionaire by a selectee), it will be deemed that the Lenders have waived their right of substitution and they don't intend to exercise the same. In this regard, DPT did not receive any representation from Lenders within the stipulated time.

Since JRE neither cured the underlying events of defaults as specified in Consultation notice dated 07.06.17 as issued by DPT nor the Lenders made any representation in line with clause 3.3.1 of the substitution agreement & also not showed any intention to exercise their right as per article 15.4 of the Concession Agreement, DPT issued a Termination Notice on 01.07.2017 with a notice period of 90 days in accordance with Article 16.1 of the Concession Agreement.

During the meeting held on 3rd July 2017 at MoS (GOI) New Delhi, that the issues may be resolved through an Arbitration process. In view of the disputes between the parties (DPT and JRE Infra Pvt. Ltd), DPT had invoked Article 19.3 (Arbitration) of the Concession Agreement, thereby an Arbitral Tribunal was constituted for adjudication of disputes between the parties under the Concession Agreement. The claim and counter claim has been filed by the Parties before the Arbitration Tribunal. The details of claim filed by DPT before the Arbitration Tribunal and the 90% of the Debt due are as under.

Claim by DPT (in Rs)	**90% of Debt Due (in Rs)**
Outstanding Dues = 64,08,58,679 Opportunity Loss = 24,01,93,55,821 ***Total claim = 24,66,02,14,500***	92,82,32,724

Since, there were substantial dues outstanding (Rs. 64,08,58,679/- from JRE, KPT considering the opinion of Senior Advocate, approved *"to take appropriate action to take over the possession of the Project site, facilities and services from the Concessionaire of 15th berth and in the event of refusal by the Concessionaire to handover the peaceful possession of the berth, necessary course of action may be initiated in the matter, as per the Concession Agreement and law of the land"*.

Accordingly, at the expiry of the Termination Notice period, as per the Concession Agreement JRE failed to fulfil its obligation of handing over the Project Site, Facilities and

Services to DPT on the Transfer Date and DPT has not paid the termination Compensation to JRE. With the expiry of the Termination Period as per DPT's Termination Notice dated 1st July 2017, the Concession Agreement stands terminated on 29th September 2017.

It is further submitted that in past DPT has issued several notices to the Escrow Bank (i.e. SBI) for breach of order of priority in appropriation of the amounts from the Escrow Account. DPT has raised specific assertions in its pleading before the Arbitrators regarding collusion between the SBI (Lenders) and JRE, inasmuch as the Bank has not provided complete record of financial transactions of JRE; and though the bank was requested to exercise its right of substitution as per the Concession Agreement during the Consultation Process (even before the Termination process), which was consciously not opted by the Lenders.

Hence in view of the foregoing and keeping in mind that the matter is sub-judice and the fact that JRE has no asset or financial credentials, DPT is of the view that it may cause serious prejudice to the interest of DPT if it would have paid Termination Compensation amount i.e. 90% of the debt due on the Transfer Date.

Immediately post expiry of Termination Notice, JRE in the interregnum had filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 before the constituted Arbitral Tribunal, seeking inter alia, *"Direct the Claimant to forthwith pay the amount of Rs. 92,82,32,724/-, (being 90% of the Debt Due to the Lender , State Bank of India in accordance with Article 17.1(b) of the Concession Agreement along with interest as per Article 17.5 of the Concession Agreement;" DPT had contested the grant of reliefs as prayed in the said application by filing its reply.*

The Arbitration Tribunal vide its order dated 4th December 2017 directed "*DPT to deposit an amount of Rs.92,82,32,724/- by way of Debt Due to the Lenders in an Escrow Account with the State Bank of India.........* ***The amount so deposited in Escrow Account shall earn interest. The principal amount and the interest shall remain available for appropriation and disbursal in accordance with the Award finally made by the Tribunal......***"

Pursuant to the order dated 4th December 2017, Board of DPT approved to implement the order and accordingly, DPT has deposited the amount of Rs.92,82,32,724/- with an intent and a clear understanding that the amount would be available for appropriation and disbursal in accordance with final award that may be made by the Arbitration Tribunal.

However, as against the above clear findings, the subsequent order dated 23rd December 2017 passed by the Arbitration Tribunal, without hearing DPT, created complication when it observes in Para 5 as under:

"....that the money is available to be commercially used by SBI and is not going to be returned in any case. The order clearly reveals that the amount so deposited would always remain with SBI, though certain directions operative between the parties only may be made by the Tribunal at the stage of final hearing."

The above observations of the Tribunal created a situation where in spite of the award being made in favour of the DPT, the amount lying with the SBI which was expressly made available for appropriation and disbursal in accordance with the award finally made by the Tribunal would not be made available to DPT.

In the circumstances, pertinently in view of the subsequent directions dated 23rd December 2017, DPT in consultation with its Senior Advocate preferred writ petition before the Hon'ble high court of Gujarat and appeals before the commercial court Rajkot challenging the order dated 4th December 2017 and 23rd December 2017. The Writ petition is disposed off by granting ad-interim relief, that SBI bank and others are restrained from appropriating amount of Rs.92,82,32,724/- from the Escrow Account of the Parties maintained with SBI. Further, the appeals filed before the commercial court Rajkot are pending for adjudication.

Hence, in view the above, at the cost of repetition it is respectfully submitted that in the case of JRE, DPT has deposited the amount of Rs. 92,82,32,724/- in the Escrow Account, with an intent and a clear understanding that the amount would be available for appropriation and disbursal in accordance with final award that may be made by the Arbitration Tribunal and not otherwise.

Chapter 5 : Process for Handling Stressed Projects

Port may make out a detailed comprehensive Proposal for taking a decision on changing the terms and conditions of the concession agreement for removal of stress. While the Proposal will be case specific keeping in view the reasons and extent of stress and proposed solution for removal of stress, it may broadly cover the following general aspects:

(i) Project Particulars such as capacity, cargo, date of commercial operation, revenue share etc. and details of concessionaire

(ii) Physical and Financial Performance of the project/ concessionaire for last 3 years such as cargo handled, revenue earned, profit/ loss from operations

(iii) Financial Position of the Concessionaire such as Paid Up Capital, Reserves & Surplus and Net worth as at the close of last 3 financial years

(iv) Status of meeting MGT and making payment to port of license fee, royalty etc. and repayment of borrowings to lenders

(v) Comments on compliance of other obligations as per concession agreement such as performance parameters

(vi) Perceived cause of stress and supporting documents evidencing the same e.g. comparative tariff at the port and neighbouring port where the cargo is perceived to be getting diverted due to higher tariff.

(vii) Proposed modifications in terms and conditions of concession agreement which should be agreed by concessionaire as necessary and sufficient

(viii) Financial Model for the remaining concession period with and without incorporating proposed changes evidencing that the proposed changes are necessary and sufficient and have been proposed for the required/ adequate period

(ix) Assessment of Financial position after implementation of the changes evidencing removal of stress.

(x) Details of existing claims/ counter-claims/litigations and how they are proposed to be treated keeping in view that the port is agreeable to amend the provisions of executed concession agreement.

(xi) Keeping in view the above facts, figures and basis of future projections port shall put up the matter to Board ensuring that the proposed recommendations are consistent with the broad policy framework approved by Government for renegotiation of contracts.

(xii) The proposal with recommendations of Board shall be submitted to the Ministry for necessary approval.

(xiii) On receipt of approval from Ministry the changes in concession agreement may be implemented as well as terms and conditions, if any, to be complied with.

(xiv) Board shall obtain Yearly outcome/Progress Report and review the same to assess whether the envisaged benefit is being achieved and stress getting removed and for ensuring that changes in concession agreement are made for required period only and to the extent necessary for removal of the stress. Any changes arising as per the review may also be carried out after obtaining approval from the Ministry.

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Annexure 1

Guidelines for Migration of BoT operators covered under Guidelines for Regulation of Tariff at Major Ports, 2004 notified on 31 March 2005 (2005 Guidelines) to Guidelines for Determination of Tariff for Projects at Major Ports, 2013 notified on 30 September 2013 (2013 Guidelines)

(i) The existing Concessionaire can choose to express its intent to the concerned Port Trust to migrate from 2005 Guidelines to 2013 Guidelines for determination of his tariff. The Concessionaire has to choose and express his intent to migrate within 4 months from the date of issue of these guidelines. The Concessionaire shall also take consent of the lenders, wherever applicable and submit to the concessioning authority'.

(ii)(a) Open re-bidding of the project will be done to determine a suitable new revenue share in an open and transparent manner' The existing BOT operator shall be deemed to be qualified for bidding and can participate in the bidding process. Tariff for the rebid project will be notified upfront by Tariff Authority for Major Ports or any other Competent Authority authorised for the purpose based on the proposal filed by the concerned Port Trust. Clauses like MGT, cargo profile, project requirement etc which are port of existing Concession Agreement cannot be changed during the tendering process. Time line for depositing replacement value of asset by the successful bidder and any other relevant issue should be clearly mentioned in the bid document by the Port Trust.

(iii) The open re-bidding is for the existing functional projects. Accordingly. re-bidding will be for the remaining period of the Concession Agreement already entered by the existing concessionaire and the Port Trust'

(iv)(a) The existing royalty or revenue share converted to royalty of the relevant project would be the Reserve Royalty for the purpose of bidding of the relevant project to protect the existing revenue share or royalty. Present Value (PV) of future revenue shares may be used to convert existing revenue share-based mechanism to royalty-based mechanism by adopting the discounting factor. The discounting factor will be the longest G-Sec rate as per the latest RBI Bulletin, as adopted in the Land Policy Guidelines, 2014 as amended in July 2015 to determine reserve price while leasing out land on upfront basis by the Port Trusts.

(iv)(b) The existing assets would be valued by adopting the replacement value of assets by an independent valuer, appointed by the Port Trust in consultation with existing concessionaire. The cost of revaluation of assets shall be initially borne by the Concerned Port Trust and shall be recovered subsequently from the successful bidder. The replacement value of the assets so determined would be the Reserve Price for the assets'

(v)(a) Prior to making an Application for bidding, the bidder shall pay to the Port Trust towards the cost of the bidding process calculated at the rate of Rs. 10,000 for every Rs. 100 Crore or part thereof comprising the replacement value of the assets of the Project.

(v)(b) The Earnest Money Deposit (EMD), calculated as per the norms set forth in the Model Bidding Document, shall be deposited by all the Bidders, including the existing concessionaire along with the bid. The EMD shall be refunded to all the unsuccessful bidders. If a bidder withdraws the bid either before or after the deadline for submission of bids, then the Port Trust will be at liberty to forfeit whole of the EMD absolutely.

(vi) If the existing concessionaire, after choosing and expressing his interest to migrate to 2013 Guidelines for determination of tariff for projects at Major Ports, withdraws the Bid either before or after the deadline for submission of bids, it shall result in the concessionaire's forfeiture of EMD. No bids shall be processed further. This shall be made very clear in the Bid Documents. The tariff of the existing concessionaire shall continue to be regulated under 2005 Guidelines'

(vii) In such re-bidding, the existing Concessionaire will be given a Right of First Refusal (ROFR) in the bidding process, wherein the existing Concessionaire will have to match the revenue share quoted by the highest bidder'

(viii) If the existing Concessionaire exercises ROFR, when another entity emerges as the highest bidder the project shall be awarded to the existing Concessionaire, provided the bid of the existing concessionaire is within 10% of the winning bid. If the bid of the existing concessionaire is not within 10% of the winning bid' the project shall be awarded to the highest bidder'

(ix) If the existing Concessionaire is the highest bidder or the sole bidder, the project may be awarded to the existing Concessionaire in this scenario also.

(x) If the existing Concessionaire does not opt to match the highest bidder, the project may be awarded to the highest bidder. The replacement value of the assets so determined has to be paid by the successful bidder to the concerned Port Trust'. The replacement value of the assets would be used only for the purpose of bidding.

(xi) The Termination payment to the existing concessionaire shall be as provided in the Concession Agreement or mutually agreed between existing Concessionaire and the Port Trust.

(xii) The existing Concessionaire would continue to operate the project till the time the new Concessionaire is appointed. The Port Trust shall ensure that the existing Concessionaire complies with conditions in the existing Concession Agreement to ensure maintenance of assets and its performance during the concession period till the assets are handed over by the existing Concessionaire. The Port Trust shall also ensure that there is no wilful deterioration of service quality or asset performance or asset stripping by the existing Concessionaire during the transition period. The Port Trust shall obtain an undertaking from the existing concessionaire for maintenance of existing assets and asset performance as per the concession Agreement till the assets are handed over to the new concessionaire with a suitable clause for penalization of the existing concessionaire, if any significant deterioration of service quality or asset performance due to his wilful act is reported / observed any time during the transition period.

(xiii) The eligibility conditions for bidders shall be as per the Model RFQ for PPP Projects.

(xiv) The existing Concessionaire shall settle all disputes before the Port Trust invites bids for the existing project. The litigation pending before any court of Law including Arbitration cases initiated by the existing Concessionaire against the Port Trusts / Tariff Authority for Major Ports / Union of India shall be withdrawn by him unconditionally before the Port Trust invites bids for the existing project' Disputed amount arising out of operation of Stay Orders passed by Courts of Law shall be kept in an Escrow Account while the existing concessionaire withdraws the litigations' The application seeking withdrawal of the litigation from the Courts should also seek the manner of utilization of the disputed amount'

(xv) The project proposed for migration should be free of all encumbrances and liabilities' All outstanding dues to the Major Port Trusts and all liabilities arising out of litigation or otherwise shall be settled mutually by the existing concessionaire and the Port Trust.

(xvi) The man power of the existing concessionaire in the event of the new concessionaire taking over the project will be taken over by the new concessionaire at his option' Or otherwise, the existing concessionaire shall settle the severance liability following the due process of Law. There should not be any liability to the Major Port Trusts arising on account of the manpower of the existing concessionaire.

(xvii) Change in shareholding pattern, if any, shall be as per provisions of the Concession Agreement.

(xviii) The Guidelines for Determination of Tariff for Projects at Major Ports' 2013 notified on 30 September 2013 (2013 Guidelines) apply to the projects to be awarded for which RFPs are issued after date of issue of the said guidelines. Therefore' the relevant clause of the said guidelines shall be amended suitably by the Ministry of Shipping for the application of the guidelines to the existing projects which are taken up for re-bidding'.

*****

ANNEXURE-77

adani

391
26/07/18

26th July 2018

Ref.: AKBTPL/KPT-OUT/2018-19/12

To,
The Superintending Engineer(Design),
Deendayal Port Trust,
Gandhidham

Dear Sir,

Sub.: Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Kandla Port on BOT basis (the Project)- Stressed PPP Projects regarding.

Ref.: DPT letter No. EG/WK/4604/PIC/779 dtd 17.07.2018

With ref. to your letter dated 17.07.2018, please find below our submission for the information sought from your good office.

a) Cargo Handled as per the Cargo Handling Certificates issued by DPT's Traffic Department in Financial year 2016-17 is 4.45 MMT and in Financial Year 2017-18 is 4.2 MMT. Enclosed at Annexure A are the copies of Cargo Handling Certificates issued by DPT's Traffic Department.

b) Cash loss incurred for 2 preceding Financial Years i.e.: for F.Y 2016-17 is -3374.32 lacs & for F.Y 2017-18 is -5566.75 lacs. The cash loss figures are certified by AKBTPL's Statutory Auditor. Refer Statutory Auditors Certificate enclosed at Annexure B.

c) Statutory Auditor's Certificate having Statement of Year-wise & Net-worth during the operation period is enclosed at Annexure B.

Request for early action in the matter.

Thanking you,

Yours truly,
Adani Kandla Bulk Terminal Pvt. Ltd.

Authorized Signatory

XEN (PPP)
26/7/18

Enclosure: Annexure A- Cargo Handling Certificates issues by DPT
Annexure B- Certificate issued by AKBTPL's Statutory Auditor.

26-7-18

115

KANDLA PORT TRUST
(AN ISO 9001:2008 CERTIFIED PORT)

TELEGRAM: PORT TRUST
PHONE NO-(02836) 270070

FAX NO-:(02836) – 270475
www.kandlaport.gov.in

OFFICE OF THE TRAFFIC MANAGER.

S.R.O section

PORT & CUSTOM BUILDING-
2nd FLOOR,

No. TF/SS/1215/

Dated 19.10.2016

To,
Adani Kandla Bulk Terminal Pvt Ltd.
Adani House,
Nr Mithakhali Circle, Navrangpura,
Ahmedabad 380009.
Gujarat.

Sub: Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Kandla port on BOT (the Project) – Cargo Handling Certificate April 2016 to Sept 2016.

Dear sir,

Kindly refer to your letter No AKBTPL-KPT/OUT/2016-17/023 dated 17th Oct 2016 on the above subject.

In this connection it is to inform you that as per the information submitted by you & made available to us, you have handled a quantity of 2.34 MMT of Cargo at Adani Kandla Bulk Terminal Pvt Ltd, at Tuna Tekra during April 2016 to Sept 2016.

Yours faithfully

Traffic Manager
Kandla Port Trust

यातायात प्रबंधक
कांडला पोर्ट ट्रस्ट
TRAFFIC MANAGER
KANDLA PORT TRUST

114

KANDLA PORT TRUST

ISO 9001-2008 & 14001:2004 Certified

SAGARMALA

S&RO SECTION.
Traffic Department
P&C Building,
New Kandla-Kachchh
FAX:+91-2836-270475
www.kandlaport.gov.in

No. TF/SS/1215/

Date: 29.05.2017

To,

Adani Kandla Bulk Terminal Pvt Ltd.
Adani House,
Nr Mithakhali Circle, Navrangpura,
Ahmedabad 380009.
Gujarat.

Sub: Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Kandla port on BOT (the Project) – Cargo Handling Certificate Oct.2016 to March 2017.

Dear sir,

Kindly refer to your letter No AKBTPL-KPT/OUT/2017-18/03 dated 267th May 2017 on the above subject

In this correction it is to inform you that as per the information submitted by you & made available to us, you have handled a quantity of 2.11 MMT of Cargo at Adani Kandla Bulk Terminal Pvt Ltd, at Tuna Tekra during Oct 2016 to March 2017.

Yours faithfully

Traffic Manager

Kandla Port Trust

113

DEENDAYAL PORT TRUST

ISO 9001-2008 & 14001:2004 Certified

SARO SECTION,
Traffic Department
PAC Building
New Kandla-Kachchh
FAX +91 2836 270475
www.kandlaport.gov.in

No. TF/SS/1215/ Dated 04.12.2017

To,

Adani Kandla Bulk Terminal Pvt Ltd

Adani House

Nr Mithakhali Circle, Navrangpura

Ahmedabad 380009

Gujarat

Sub: Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Deendayal port on BOT basis (the Project) – Cargo Handling Certificate April 17 to Sept.17(H1).

Dear sir,

Kindly refer to your letter No AKBTPL-KPT/OUT/2017-18/028 dated 29th Nov. 2017 on the above subject

In this connection it is to inform you that as per the information submitted by you & made available to us, you have handled a quantity of 1.60 MMTs of Cargo at Adani Kandla's Bulk Terminal at Tuna Tekra during April 17 to Sept. 17.

Yours faithfully

Traffic Manager

Deendayal Port Trust

112

DEENDAYAL PORT TRUST

ISO 9001-2008 & 14001:2004 Certified

S&RO SECTION,
Traffic Department
P&C Building,
New Kandla-Kachchh
FAX:+91-2836-270475
www.kandlaport.gov.in

SAGARMALA

No. TF/SS/1215/

Dated 24.07.2018

To,

Adani Kandla Bulk Terminal Pvt Ltd

Adani House

Nr Mithakhali Circle, Navrangpura

Ahmedabad 380009

Gujarat

Sub: Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Deendayal port on BOT basis (the Project) – Cargo Handling Certificate Oct'17 to March 18 (H2).

Dear Sir,

Kindly refer to your letter No AKBTPL/KPT-OUT/2018-19/10 dated 23rd July 2018 on the above subject

In this connection it is to inform you that as per the information submitted by you & made available to us, you have handled a quantity of around 2.6 MMT of Cargo at Adani Kandla Bulk Terminal Pvt Ltd at Tuna Tekra during Oct'17 to March '18.

Yours faithfully

Traffic Manager

111

ANNEXURE - B

Deloitte Haskins & Sells LLP

Chartered Accountants
19th Floor, Shapath - V
S G Highway
Ahmedabad - 380 015
Gujarat, India

Tel: +91 79 6682 7300
Fax: +91 79 6682 7400

Ref: KR/AKBTPL/2018-19/03
The Board of Directors,
Adani Kandla Bulk Terminal Private Limited,
Adani House,
Near Mithakali Six Roads,
Navrangpura,
Ahmedabad 380009

INDEPENDENT AUDITOR'S CERTIFICATE ON THE CASH LOSS FOR FINANCIAL YEARS 2016-17 & 2017-18, NET LOSS FOR FINANCIAL YEARS FROM 2014-15 TO 2017-18 AND NET WORTH AS AT MARCH 31, 2015, MARCH 31, 2016, MARCH 31, 2017 & MARCH 31, 2018

1. This certificate is issued in accordance with your request mail dated 18th July 2018 and in the capacity of statutory auditor of Adani Kandla Bulk Terminal Private Limited ("the Company").

2. The accompanying Statement titled **"Statement showing Cash Loss, Net Loss and Net Worth from the FY 2014-15 to FY 2017-18"** (hereinafter referred to as "the Statement") contains the computation of cash loss for the financial years 2016-17 and 2017-18, net loss for the financial years 2014-15 to 2017-18 and net worth as at March 31, 2015, March 31, 2016, March 31, 2017 & March 31, 2018. The Statement is prepared by the Management of the Company solely for submission to Deendayal Port Trust vide its letter dated July 17, 2018 and is initialled for the purpose of identification.

Management's Responsibility for the Statement

3. The preparation of the Statement is the responsibility of the Management of the Company including the preparation and maintenance of all accounting and other relevant supporting records and documents. This responsibility includes the design, implementation and maintenance of internal control relevant to the preparation and presentation of the Statement and applying an appropriate basis of preparation; and making estimates that are reasonable in the circumstances.

Auditor's Responsibility

4. Our responsibility, for the purpose of this certificate, is to provide a limited assurance, that the amounts of cash loss, net loss and net worth as contained in the Statement are appropriately extracted from / appropriately derived based on the audited financial statements of the Company for the respective financial years.

5. The financial statements as of and for the year ended March 31, 2015 to March 31, 2017 have been audited by S R B C & Co LLP ("predecessor auditor"), on which they issued an unmodified audit opinion vide their reports dated April 27, 2015, April 26, 2016 and May 11, 2017 respectively. Their audit of these financial statements were conducted in accordance with the Standards on Auditing specified under Section 143(10) of the Companies Act, 2013. Our report on the Statement, in so far as it relates to the amounts pertaining to these financial years is solely based on such financial statements as audited by the predecessor auditor. The financial statements as of and for the year ended 31st March 31, 2018, in respect of the Company, have been audited by us, on which we issued an unmodified audit opinion vide our report dated 3rd May, 2018. Our audit of these financial statements were conducted in accordance with the Standards on Auditing

Deloitte
Haskins & Sells LLP

specified under Section 143(10) of the Companies Act, 2013. Those Standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

6. We conducted our procedures in accordance with the Guidance Note on Reports or Certificates for Special Purposes issued by the Institute of Chartered Accountants of India (ICAI) and Standards on Auditing specified under Section 143(10) of the Companies Act 2013. The Guidance Note requires that we comply with the ethical requirements of the Code of Ethics issued by the ICAI.

7. We have complied with the relevant applicable requirements of the Standard on Quality Control (SQC) 1, Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

Conclusion

8. Based on the procedures performed as above, according to the information and explanations provided to us, and representation given by the Management of the Company, we report that nothing has come to our attention that causes us to believe that the amount of Cash loss, net loss and net worth as contained in the statement are not appropriately extracted from /appropriately derived based on the audited Financial Statement of the Company for the respective financial years.

Restriction on Use

9. This certificate is addressed to and provided to the Board of Directors of the Company solely for submission to Deendayal Port Trust and should not be used for any other purpose without our prior written consent. Accordingly, we do not accept or assume any liability or any duty of care for any other purpose or to any other person to whom this certificate is shown or into whose hands it may come without our prior consent in writing.

For **Deloitte Haskins & Sells LLP**
Chartered Accountants
(Firm's Registration No. 117366W/W-100018)

DELOITTE HASKINS & SELLS LLP CHARTERED ACCOUNTANTS

Kartikeya Raval

Kartikeya Raval
(Partner)
(Membership No. 106189)

Place: Ahmedabad

Date: July 23, 2018

adani

Statement showing Cash Loss, Net Worth and Net Loss from the FY 2014-15 to FY 2017-18

Year	Cash Loss ₹(in Lacs) (Refer Note 2 below)	Net worth ₹(in Lacs)	Net loss ₹(in Lacs)
2014-2015	Note 3 below	1,420.30	-580.42
2015-2016	Note 3 below	-4,022.20	-15,442.50
2016-2017	-3,374.32	-13,137.74	-9,130.13
2017-2018	-5,566.75	-24,531.42	-11,393.68

Note:-

(1) The company started its commercial operations from March 17, 2015 and accordingly net loss and net worth have been considered from 2014-15 onwards.

(2) Cash loss = Total Comprehensive Income+ Depreciation and Amortisation Expense

(3) In terms of letter from Deendayal Port Trust dated July 17, 2018 to the Company, the cash loss details are required for preceding two financials years.

For, Adani Kandla Bulk Terminal Private Limited

Azad Somani

Authorised Signatory
Azad Somani
Date: 21 July, 2018

For Identification Purposes Only
DELOITTE HASKINS & SELLS LLP
CHARTERED ACCOUNTANTS

Adani Kandla Bulk Terminal Pvt Ltd
Adani House
Nr Mithakhali Circle, Navrangpura
Ahmedabad 380 009
Gujarat, India

Tel +91 79 2656 5801
Fax +91 79 2555 6490
info@adani.com
www.adani.com
CIN: U63090GJ2012PTC069305

108

Registered Office: Adani House, Nr Mithakhali Circle, Navrangpura, Ahmedabad 380 009, Gujarat, India

resurgent Debt Equity Advisory Training **ANNEXURE-78**

Ref: RIL/KPT/2018-19/41

Date: 03.08.2018

To,

Superintending Engineer (D)
Kandla Port Trust,
Annex Administrative Building,
Gandhidham – 370201.

Subject: Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Kandla Port on BOT Basis – Actual Project Cost.

Reference:

- Your letter vide EG/WK/4604/XI/Part III dated 27.03.2018
- Letter submitted by M/s AKBTPL vide AKBTPL / KPT- OUT / 2018 -19 /12 dated 26.07.2018
- Your E – Mail dated 11.07.2018
- MoS letter vide no. PD-13/1/2018-PPPCell dated 11.07.2018

Sir,

With respect to the subject matter and your letter vide EG/WK/4604/XI/Part III dated 27.03.2018, wherein you have provided us M/s AKBTPL letter dated 26.07.2018, for classification of subject project as Stressed Project, in consistence with Ministry's letter dated 11.07.2018. In this regard, you have requested us to examine the aforesaid letter of M/s AKBTPL and intimate whether the subject project can be classifies as Stresses Project in consistence with MoS directives dated 11.07.2018.

In view of above request made, we have examined the letter received from M/s AKBTPL with respect to MoS directives dated 11.07.2018 and following are our views / observations made.

Sl No	MoS Directives dated 11.07.2018	Data Provided by Concessionaire vide letter dated 26.07.2018	Our Views / Observations
	The project is sub-optimally utilized as evidenced by the actual cargo handled by the operator during two preceding Financial years being less than 70% of the projection as per DPR/Feasibility report	As per the data provided by the Concessionaire , which is duly certified by the Traffic Manager, the amount of actual Cargo handled in the Financial Year 2016 - 17 is 4.45 MMT and in the Financial Year 2017 - 18 is	As per Feasibility report, the handling capacity of M/s AKBTPL is 14.112 MMT per annum. From the data provided by the Concessionaire it is perceptible that actual cargo handled by the operator during two preceding

STh (D)
03/08/2018

	forming part of the bid document and ;	4.2 MMT.	Financial years being less than 70% of the projection as per DPR/Feasibility report.
	Project SPV incurring cash loss continuously for two preceding financial years and ;	As per the Data provided by the Concessionaire, which is duly certified by their Statutory Auditor states that the cash loss is of 3374.32 Lacs in the Financial Year 2016 - 17 and 5566.75 Lacs in the Financial Year 2017 - 18.	From the data provided by the Concessionaire it is perceptible that Project SPV incurring cash loss continuously for two preceding financial years
	That the losses incurred by concessionaire has caused atleast 50% erosion of its peak Net Worth during the operation period.	As per the Data provided by the Concessionaire , which is duly certified by their Statutory Auditor states that the Net Worth of M/s AKBTPL is of 1,420.30 Lacs in FY 2014 - 15, -4,022.20 Lacs in FY 2015 - 16, -13,137.74 Lacs in FY 2016 - 17 and -24,531.42 in FY 2017 - 18 . And the net losses incurred is of 580.42 Lacs in FY 2014 - 15, 15,442.50 Lacs in FY 2015 -16, 9,130.13 Lacs in FY 2016 - 17 and 11,393.68 in FY 2017 - 18	As per the data provided by the Concessionaire which is duly certified by the Statutory Auditor, it can be observed that the Peak net worth of the project is of Rs 1420.30 Lacs. The amount of losses incurred by the Concessionaire is of about RS 36546.73 Lacs. From the above details it is perceptible that the loss incurred by Concessionaire has caused atleast 50% erosion of its peak Net Worth during the operation period.

In view of the above observations made based on the data provided by the Concessionaire, we understand that the subject project fulfils the criteria(s) specified by MoS vide its directive dated 11.07.2018, hence the subject project may be classified as a Stressed Project.

Further, DPT in its letter vide dated 27.07.2018 DPT has sought clarification whether for removal of stress of the project, in case if the project gets classified as Stresses Project, DPT have to refer the proposal to amend the tariff for storage as approved by DPT's Board.

In this regard, we refer to the MoS letter vide no. PD-13/1/2018-PPPCell dated 11.07.2018 wherein it is mentioned that " *The Committee headed by AS&FA, MoS is of the view that whereever such issue of abnormal storage charges emerges in Stresses Projects as defined in Para 3 above, the port may approach TAMP under the provisions of " Amendments, Modifications or Alterations" to the terms and conditions of the Concession Agreement with an appropriate proposal for rationalization of storage charges in consultations with Concessionaire's so as to achieve the ARR as per the TAMP Guidelines / notifications*"

This is for your information, record and further necessary action.

Regards,
For Resurgent India Limited

Anand. B

Authorised Signatory
(Financial Manager)

ANNEXURE-79

DEENDAYAL PORT TRUST

SAGARMALA
PORT-LED PROSPERITY

SIPC KANDLA
RIDE THE WAVE OF PROGRESS

स्वच्छ भारत
एक कदम स्वच्छता की ओर

Office of the Chief Engineer
Room No. 219, ANNEX, Administrative Office
Gandhidham – Kutch Pin – 370 201
Tel (O) : (02836) 233192,
Fax : (02836) 220050
E – Mail : chiefengineer@kandlaport.com

61

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Fax:- 011- 24365866
Email : iahmed04@rediffmail.com, psmd.ipa@nic.in, md.ipa@nic.in

EG/WK/4604/XI/Part –II

Date: 30.10.18

To,
The Managing Director,
Indian Port Association,
1st Floor, South Tower,
NBCC Place, Bhisham Pitamah Marg,
Lodi Road,
New Delhi-110003

Sub:- Developing Dry Bulk Terminal off Tekra near Tuna on BOT basis – Rationalisation of approved Upfront Tariff for storage – reg
Ref: PD-13/1/2018-PPP Cell dtd 11.07.18

1. Deendayal Port Trust being Concessioning Authority has entered into Concession Agreement (CA) with M/s Adani Kandla Bulk Terminal Pvt Ltd (AKBTPL) being Concessionaire on 27.06.12 to develop the Project (Development of Dry Bulk Terminal off Tekra near Tuna) on BOT Basis for 30 years Concession period.
2. Concessionaire had completed the project and started commercial operation of on 10.02.15.
3. For the project, in 2010, TAMP had approved the Upfront Tariff in accordance with the Guidelines for Upfront Tariff setting for PPP Projects at Major Ports-2008. The approved tariff for storage, for period from date of approval of the Tariff i.e. 02.11.2010 upto 31.03.11 are as under:-

For Import & Export (Rate in Rs. Per MT per Day)

Commodity	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
All type of cargo	Rs 2.07	Rs 4.14	Rs 6.21

(a) The above tariff will be applicable after free period of 5 days for import and 15 days for export.

(b) The above tariff is based on the assumption that 60 % of cargo will be evacuated within free period and balance 40 % cargo will be evacuated within 10 days after free period.

(c) The above Tariff meet with total revenue requirement of Rs. 1168.7 lakh, 5% of total revenue requirement for the project.

(d) the tariff will be indexed to inflation of 60% of variation in WPI occurring between 01.01.10 and 1st January of relevant year

4. In order to remove the stress of the project, as per the directives of Ministry vide letter dated 11.07.2018 referred above, DPT has envisaged to rationalize the above stated upfront tariff for storage with approval of TAMP.

5. As per para 6 of the Ministry's letter dated 11.07.2018, the revised tariff for storage, to be proposed to TAMP for approval, is worked out as below:

For Import & Export (Rate in Rs. Per MT per Day)

Commodity	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
All type of cargo	Rs 0.29	Rs 0.57	Rs 0.86

(a) However, the remaining parameters viz. free period, revenue requirement & applicable escalation will remain same as per the original approved tariff for storage

(b) The above proposed tariff are based on the evacuation of dry bulk cargo from the subject project for the years 2015-16, 2016-17 & 2017-18

6. The detailed calculation towards working of above proposed Tariff for storage are enclosed as annexure I.

7. As decided by Competent Authority of DPT, it is requested to kindly intimate the methodology adopted towards rationailising the upfront tariff for storage for the project is permitted as per the above referred Ministry's directives dated 11.07.2018?

Encl:- As above

Yours faithfully,

Chief Engineer

Annexure - I

(211)

(188)

Annexure - 1 - TAMP Proposal for Amendment of Storage Charges for Dry Bulk terminal Off tekra

As per TAMP Order for TEKRA	Rs. Lakhs.
Revenue Requirement as per approved TAMP Order	1168.7
Revenue Requirement in Amt. Rs.	116870000

Particulars	2015-16	2016-17	2017-18	Total	Average	Storage of Cargo belonging to									Total I	Assumed
						81st day onwards after free period	71st day to 80th day after free period	61st day to 70th day after free period	51st day to 60th day after free period	41st day to 50th day after free period	31st day to 40th day after free period	21st day to 30th day after free period	11th day to 20th day after free period	1st day to 10th day after free period	Stored	as Stored
Total Dry Bulk Cargo	37,27,851.44	44,56,100.00	42,05,212.94	1,23,89,164.38	100.00%											
Free period	13,88,894.61	13,50,381.99	20,08,611.60	47,47,888.20	38.32%											for
1st day to 10th day after free period	7,14,302.28	10,32,021.31	5,02,241.40	22,48,564.99	18.15%	1.12%	0.86%	1.75%	2.22%	4.30%	7.09%	11.14%	15.05%	9.07%	52.60%	1st day to 10th day after free period
11th day to 20th day after free period	5,67,432.46	7,79,791.50	5,17,145.10	18,64,369.06	15.05%	1.12%	0.86%	1.75%	2.22%	4.30%	7.09%	11.14%	7.52%		36.00%	11th day to 20th day after free period
21st day to 30th day after free period	4,42,151.38	4,92,321.26	4,45,842.70	13,80,315.33	11.14%	1.12%	0.86%	1.75%	2.22%	4.30%	7.09%	5.57%			22.91%	21st day to 30th day after free period
31st day to 40th day after free period	3,41,767.71	2,80,367.64	2,56,686.46	8,78,821.80	7.09%	1.12%	0.86%	1.75%	2.22%	4.30%	3.55%				13.79%	31st day to 40th day after free period
41st day to 50th day after free period	1,43,820.48	1,97,825.18	1,91,029.57	5,32,675.23	4.30%	1.12%	0.86%	1.75%	2.22%	2.15%					8.09%	41st day to 50th day after free period
51st day to 60th day after free period	53,836.59	1,33,618.25	88,028.43	2,75,483.27	2.22%	1.12%	0.86%	1.75%	1.11%						4.83%	51st day to 60th day after free period
61st day to 70th day after free period	9,054.52	1,48,112.25	59,323.12	2,16,489.90	1.75%	1.12%	0.86%	0.87%							2.85%	61st day to 70th day after free period
71st day to 80th day after free period	43,084.80	22,167.89	40,818.15	1,06,070.84	0.86%	1.12%	0.43%								1.55%	71st day to 80th day after free period
81st day onwards after free period	23,506.60	19,492.74	95,486.42	1,38,485.76	1.12%	0.56%									0.56%	81st day onwards after free period

Calculation of Revised Storage Charges as per formula recognised by TAMP in Dry Bulk Terminal, Tuna Barge Jetty, Bunder Basin, etc.

Particulars	% Qty	Qty	Rate for days per ton per day	Rs. Lacs	Rate with Escalation
					26.20%
Total Cargo	14112000		10		
1st day to 10th day after free period	52.60%	7423246	0.29	213	0.36
11th day to 20th day after free period	36.00%	5080807	0.57	292	0.72
21st day to 30th day after free period	22.91%	3232862	0.86	279	1.09
31st day to 40th day after free period	13.79%	1946216	0.86	168	1.09
41st day to 50th day after free period	8.09%	1142326	0.86	98	1.09
51st day to 60th day after free period	4.83%	682056	0.86	59	1.09
61st day to 70th day after free period	2.85%	401862	0.86	35	1.09
71st day to 80th day after free period	1.55%	218154	0.86	19	1.09
81st day onwards after free period	0.56%	78872	0.86	7	1.09
Total Revenue				1168.70	

ANNEXURE-80

Annexure- VII

Annexure- VII

Gmail PIC KPT <kptpic@gmail.com>

Fwd: Revision of storage charges

1 message

Chief Engineer <chiefengineerdpt@gmail.com> 17 January 2019 at 11:50
To: xenpic@gmail.com, kpt designsection <kptdesignsection@gmail.com>, Pic Kpt <kptpic@gmail.com>

---------- Forwarded message ---------
From: **PS to MD, IPA** <psmd.ipa@nic.in>
Date: Fri, Jan 11, 2019 at 9:23 AM
Subject: Fwd: Revision of storage charges
To: <chiefengineerdpt@gmail.com>, <secretary@deendayalport.gov.in>, <trafficmanager@kandlaport.gov.in>
Cc: Iftikhar ahmed <iahmed04@rediffmail.com>

Sir

As desired, opinion on the subject prepared by IPA PPP Expert & Resource Person engaged on the subject matter is attached for your perusal.

Regards

O/o MD, IPA
011-24365632 (D)
011-24365866 (F)

(Pl. share your contact details for appointments, preferably Mob. No. to keep you updated)

Brief Note DPT.doc
32K

Brief Note on Rationalisation of Storage Charges

The issue of rationalisation of storage charges has been dealt with while developing way forward in case of stressed projects. It was brought out that free period allowed in a project as per TAMP tariff order is very less and according % of storage charges payable is much higher than that envisaged while arriving at storage charges by TAMP. It was also pointed out that as the neighbouring private ports are allowing much longer period, the port is losing cargo and utilisation of projects assets is suboptimal. The outcome on the issue of Storage charges was as under:

On the issue of rationalisation of storage charges a view was formed that wherever such issue of abnormal storage charges emerges in case of stressed projects, the Ports may approach TAMP under the provisions of Amendments, Modifications or Alterations to the terms and conditions of concession agreement with an appropriate proposal for rationalisation of storage charges in consultation with concessionaire so as to achieve the ARR as per TAMP Guidelines/ Notification.

As may be observed from above the intention is not to cover the circumstances arising from storage period related issues only. As abnormal storage charges could be due to high tariff as well, rationalisation of tariff by altering rates may be considered to be within the scope of the Ministry Letter on the subject.

DPT has worked out following revised rates based on Evacuation Pattern observed during last 3 years, keeping Free Period, Escalation over various periods and ARR requirement unchanged.

Rate 1st to 10th days after free period (Rs. Per MT per day)	Rate 11th to 20th days after free period (Rs. Per MT per day)	Rate 21 st day onward after free period (Rs. Per MT per day)
0.29	0.57	0.86

DPT has also sent worksheet for arriving at the above rates.

We have gone through the calculations and observe that the same are in order. Accordingly, DPT may take up with TAMP for approval of the proposed rates.

adani

ANNEXURE-81

Ref. No.: AKBTPL/KPT-OUT/2018-19/30

1st February, 2019

To,
The Superintending Engineer (D) & Nodal Officer (PIC),
Deendayal Port Trust,
Gandhidham

846
02/02/19

Dear Sir,

Sub.: Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Kandla Port on BOT Basis – Stressed PPP Projects – Rationalization of Storage Charges regd.

Ref.: i) Ministry of Shipping letter vide File No. PD13/1/2018-PPPCell dated 11.07.2018
ii) DPT letter No. EG/WK/4604/XI/PART-II/06 dated 31.01.2019

With reference to the above, we acknowledge with thanks the receipt of your letter at reference (ii) above. At the outset we would like to express our gratitude towards Ministry of Shipping (MoS) and Deendayal Port Trust (DPT), for considering the need to resolve issue of storage charges for removal of stress in the project.

The revised Storage Charges as calculated and proposed by your good office based on AKBTPL's cargo evacuation pattern of 2015-16, 2016-17 & 2017-18 is hereby accepted by us with below comments which will be raised at appropriate time during TAMP hearing on the proposal.

1. The Storage Charges as notified in the TAMP Order dated 2nd November 2010 in respect of the subject terminal were exorbitantly high and accordingly your good office under the directions as contained in order of MoS at reference (i) above have made the fair calculations and calculated revised tariff for the same within the framework of TAMP guidelines for ARR. We appreciate the same and concur with the

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XEN (PIC)
2/2/19

.....2

calculations, with the request that same be made applicable since inception of the project. Since the subject project is classified as a stressed asset, any recovery of revenue share on storage charges at old rates will increase the stress and we do not have the cash flows to absorb liquidation of such notional liability.

2. The revised tariff may be reviewed after 1 year of implementation as given in clause 7 of the order of MoS at reference (i) above.

Request you to kindly consider this letter as our acceptance of Draft Storage Charges as worked out by DPT and also grant us leave to refer the 2 points above to TAMP at the time of joint hearing.

Thanking you,

Yours truly,
Adani Kandla Bulk Terminal Pvt. Ltd.

Hiren Shah
Port Head

Adani Kandla Bulk Terminal Pvt Ltd
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ANNEXURE-82

resurgentindia
Debt | Equity | Advisory | Training

Ref: RIL/DPT/2018-19/104

Date: 21.02.2019

To,
Superintending Engineer (Design)
Deendayal Port Trust
Administrative Office Building,
Gandhidham – 370201

Subject: "Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Kandla Port on BOT Basis " - rationalizing the tariff for Storage – Regarding

Reference: DPT email dated 21.02.2019

Sir,

With reference to the subject matter and your email dated 21.02.2019, wherein DPT with reference to the decision made during the joint meeting held among HoD's along with the concerned Port officials on 21.02.2019 chaired by Chairman of DPT, have requested us to kindly revised our earlier submitted tariff proposal in line with the option suggested by the committee referred under Para 4 of the MoS Letter dated 11.07.2018("hereinafter referred to as "MoS Letter").

In view of the above request made by DPT, we have analyzed Para 4 of MoS Letter upon which DPT has requested us to revise our already submitted tariff proposal, wherein MoS had reiterated the opinion of the Committee (i.e. the Committee formed under the Chairmanship of Chairman IPA on 28.12.2017 to take timely decision on port issues such as MGT, Permissions, port charges, storage charges etc. of PPP users) ("hereinafter referred to as "Committee") for rationalization of storage charges levied at the DBFOT terminals to make them competitive with neighboring Non-Major Ports which are run by private organizations.

On comparing the reiteration made at Para 4 of MoS letter, in-line with the report submitted by the Committee on 04.04.2018 (which was enclosed as Annexure – I of MoS letter) ("hereinafter referred to as "Report"); we observe anomaly between views expressed by the Committee mentioned at the ending part of Chapter 3 therein and the reiteration made at Para 4 of MoS Letter; such anomaly is discussed as under:

Para 4 (ii) of MoS letter indicates that the "Concessionaire shall pay Royalty equal to 1% of ARR if the cargo is cleared after the expiry of free period as per executed Concession Agreement but within the extended free period". On contrary, Chapter 3 (1) (d) (ii) of Report indicates that the "Concessionaire shall pay Royalty equal to quoted % of 1% of ARR if the cargo is cleared after the expiry of free period as per executed concession agreement but within the extended free period".

In view of afore-observed anomaly between the MoS letter and the Report of Committee, we understand that there seems to be an inadvertent slip-up on reiterating the opinion of Committee in MoS letter. Under such circumstance of aberration, we have considered the views provided under Chapter 3 (1) (d) of the Report of Committee for arriving at the revision

XEN (P&D)
26/2/19

RIL/DPT/2018-19/104 Date 21:

wards rationalization of storage charges which is enclosed as Annexure - A for your kind perusal.

Further, since the revenue towards the Storage Charge for the Present project was envisaged as 5% of ARR during the Tariff approval stage, 5% of ARR towards Storage charge has been considered for the present rationalization deviating from 1% of ARR towards Storage charge as mentioned at the Report.

This is for your information, record and further necessary action.

For **Resurgent India Ltd**

Authorizing Signatory

ANNEXURE - 'A

Rates as per TAMP Approved Order & Appendix 12 of CA		
1-5 days	Free	Rs/MT/day
6-15 days	2.07	
16 to 25 days	4.14	
More than 26 days	6.21	

Revenue Requirement for Storage Charges as per approved TAMP Order	1168.7	Lakh Rs

Capacity of the Terminal	14112000	MMTPA

Calculation for achieving the revenue required towards Storage Charges			
Period	% Quantity	Quantity	Revenue
1st day to 10th day after free period	52.60%	74,23,246	-
11th day to 20th day after free period	36.00%	50,80,807	-
21st day to 30th day after free period	22.91%	32,32,862	-
31st day to 40th day after free period	13.79%	19,46,216	-
41st day to 50th day after free period (with parting)	8.09%	11,42,326	3,11,41,976.93
51st day to 60th day after free period	4.83%	6,82,056	4,23,55,648.42
61st day to 70th day after free period	2.85%	4,01,862	2,49,55,635.28
71st day to 80th day after free period	1.55%	2,18,154	1,35,47,368.87
81st day onwards after free period	0.56%	78,872	48,97,937.92
	ARR on storage (approx)		₹ 11,68,98,567.42

Days considered in 41 to 50 slab	4.39	days
Free days in 41 to 50 slab	5.61	days
Extended days after free period	45.61	days
Rounding the Extended days after free period	46	days

Extension Required after free period (A)	*46*	*days*
Applicable free period (B)	*5*	*days*
Proposed free period (C) = (A) + (B)	*51*	*days*

Charges as per the methodology given under Chapter 3 (1) (d) (ii) of Committee Report			
S. No.	Storage days	Storage Charge/MT/Day	
		Approved SOR	Revised Proposal
1	0 to 5 days	No Charges	No Charges
2	6 to 15 days	2.07	No Charges
3	16 to 25 days	4.14	No Charges
4	26 to 35 days	6.21	No Charges
5	36 to 45 days	6.21	No Charges
6	46 to 51 days	6.21	No Charges
7	52 days onwards	6.21	6.21*

* to be escalated up to 60% of WPI indexation as issued by TAMP time to time

	Days	Revised Proposal
Rationalized as per Chapter 3 (1) (d) (ii) of Committee Report	0 to 5	Free period as per the Concession Agreement
	6 to 51	Royalty equal to quoted 25.09% of 5% of ARR
	52 onwards	25.09% on the Actual Storage Charges recovered or 5% of the ARR, whichever is higher

ANNEXURE-83

adani

Ref. No.: AKBTPL/KPT-OUT/2018-19/31

22nd February, 2019

To,
The Superintending Engineer (D) & Nodal Officer (PIC),
Deendayal Port Trust,
Gandhidham

Dear Sir,

Sub.: Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Kandla Port on BOT Basis – Stressed PPP Projects – Rationalization of Storage Charges regd.

Ref.: i) Ministry of Shipping letter vide File No. PD13/1/2018-PPPCell dated 11.07.2018
ii) DPT letter No. EG/WK/4604/XI/PART-II/06 dated 31.01.2019
iii) AKBTPL letter No. AKBTPL/KPT-OUT/2018-19/30 dated 01.02.2019
iv) DPT letter No. EG/WK/4604/ dated 22.02.2019

With reference to your letter dated 22.02.2019, we acknowledge the receipt of the letter where-by DPT has worked out a revised storage proposal.

We hereby give our consent to accept the revised proposal of DPT.

We would also like to place on record the following operating mechanism in line with MoS letter given at reference (i) above.

(i) No storage charges if the cargo is cleared within free period as contained in Concession Agreement.

(ii) 25.09% royalty on escalated ARR (for storage charges) as per TAMP order dated 02.11.2010, will be paid to DPT for the cargo cleared within extended free period.

(iii) 25.09% royalty on actual storage charges recovered from the customers or 25.09% royalty on escalated ARR (for storage charges) as per TAMP order dated 02.11.2010, whichever is higher will be paid by us on cargo staying in the port beyond extended free period. This will be paid after adjusting the revenue share paid on storage charges at clause (ii) above.

53-A
22/02/19

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XEN (PIC)
22/2/19

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Gujarat, India
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adani

We also crave leave to submit to TAMP at the time of Joint Hearing to process our request with effect from inception of the commercial operations at the terminal.

It would be pertinent to mention that, for the purposes of calculation of above we suggest as under:

We will deposit in equated monthly instalments 25.09% of escalated ARR for the entire revenue envisaged by DPT under the storage head at the time of TAMP notification dated 02.11.2010. Thereafter, at the time of annual audit if the income from storage charges is exceeding total escalated ARR (from storage charges) as envisaged in original TAMP order, 25.09% of differential revenue will be deposited with DPT as revenue share at the end of the financial year.

Moreover, as per MoS letter, the same will be reviewed after 1 year and if any fine tuning is required, the same will be done in consultation with TAMP.

Thanking you,

Yours truly,
Adani Kandla Bulk Terminal Pvt. Ltd.

Hiren Shah
Port Head

Adani Kandla Bulk Terminal Pvt Ltd
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Gmail

Chief Engineer KPT <pmckpt@gmail.com>

IPA_views_on__Board_Note_for_AKBTPL_-_Rationalization_of_Storage_Tariff

1 message

Iftikhar ahmed <iahmed04@rediffmail.com> 6 March 2019 at 13:30
To: chiefengineerdpt@gmail.com, pmckpt@gmail.com

Dear Sir

IPA observations on the Board Note on the subject is attached.

regards

I. Ahmed,
Adviser
Indian Ports Association,New Delhi
Phone + 011 24365514 (Direct)
24369063/61/8334 (EPBX)
fax + 011 24365866

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43K

IPA Views/ Observations on DPT Draft Board Note forRationalization of Storage Charges for Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek Project at Kandla Port

Having gone through the Board Note, it is observed that:

1. As per TAMP order, the approved tariff for storage charges, for period from date of approval of the Tariff i.e. 02.11.2010 to 31.03.11 was as under: -

For Import & Export (Rate in Rs. Per MT per Day)

Commodity	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
All type of cargo	Rs 2.07	Rs 4.14	Rs 6.21

2. Keeping in view that actual % of revenue out of storage charges which was much higher than envisaged 5%, a proposal was sent by DPT for revision of Upfront Tariff for Storage for the Project to TAMP on 26.11.2014 for approval. As per the proposal, the amended tariff for the storage were as below: -

For Import &Export (Rate in Rs. Per MT per Day)

Commodity	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
All type of cargo	0.15	0.31	0.46

This proposal was not approved by TAMP.

3. Since then Ministry has issued Guidelines for handling of stressed projects on 11-07-2018and accordingly DPT has taken up revision of storage charges again as per guidelines. At this stage Finance Department, DPT suggested that instead of sending the above proposal again to TAMP, revision in tariff may be sought as per actual cargo evacuation pattern of the project.
4. Accordingly, M/s Resurgent India Private Limited being TA worked out the revised Tariff for storage, by keeping the revenue requirement for storage for the project same as per the originally approved tariff for the project, which is given below. The rates were worked out by suitable adjustment of tariff for the various time slabs based on ARR as per TAMP approval. This following tariff structure was referred to IPA as well as concessionaire and was consented by both.

Reference	Rate from 1st day to 10th day	Rate from 11th day to 20th day	Rate from 21st day onward
Revised proposed tariff	Rs. 0.29	Rs. 0.57	Rs. 0.86

5. However, while finalizing the proposal, it was decided that the storage tariff for the project should be rationalized in line with the option, suggested by the IPA committee, and referred under para 4 of the MoS Letter dated 11.07.2018.
6. The storage charges were worked out again which are as under:

Charges as per the methodology given under Chapter 3 (1) (d) (ii) of Committee Report			
S. No.	Storage days	Storage Charge/MT/Day	
		Approved SOR	Revised Proposal
1	0 to 5 days	No Charges	No Charges
2	6 to 15 days	2.07	No Charges
3	16 to 25 days	4.14	No Charges
4	26 to 35 days	6.21	No Charges
5	36 to 45 days	6.21	No Charges
6	46 to 51 days	6.21	No Charges
7	52 days onwards	6.21	6.21*

* to be escalated up to 60% of WPI indexation as issued by TAMP time to time

The above rates have also been consented by Concessionaire.

In the above background, DPT has sought IPA views on the Draft Note and the Tariff Rates arrived by them for seeking TAMP approval.

Our Views / Observations:

DPT had earlier arrived at following rates which were consented by IPA:

Reference	Rate from 1st day	Rate from 11th	Rate from 21st day

	to 10th day	day to 20th day	onward
Revised proposed tariff	Rs. 0.29	Rs. 0.57	Rs. 0.86

DPT has again revised the above rates so as to be in conformity with the recommendations as per IPA committee Report under Chapter 3 (1) (d) (ii) of theReport. It is submitted that as far as the issue of storage charges is concerned, the directions of Ministry are to comply with the recommendations of the AS&FA Committee which are as under:

"After detailed deliberation, the Committee is of the view that it is between the Port Authority and the concessionnairethat wherever such issue of abnormal storage charges emerge in any Major Port for stressed projects (as per Chapter 2 of the report), those Ports may approach TAMP with an appropriate proposal for rationalization of storage charges in consultation with the concessionaires. It should be done in such a way that the ARR as per the TAMP Guidelines/Notification is achieved. TAMP has to consider such proposals on merit. The Committee also recommends to review the situation by the Concessioning Authority periodically for optimum utilization of the facility created"

Hence the only requirement of rationalization of storage charges is that ARR as per TAMP Guidelines/ Notification is to be achieved. It may be observed that above referred tariff rates meet this requirement and hence DPT may approach TAMP for revision of tariff on above basis.

It may be added furtherthat the rate proposed in Board Note envisage tariff of Rs.6.21 per MT Per day after free period of 45 days. We are of the view that if there are time slabs with increasing storage charges, the concessionaire shall be encouraged to get the cargo evacuated at the earliest resulting in optimum utilisation of the storage facility at port. In the proposed rate structure, there is no motivation to evacuate the cargo before 45 days.

adani

UNDERTAKING

Date:03.12.2019

To
The Chief Engineer,
Deendayal Port Trust
Annex, Administrative Office Building,
Gandhidham (Kutch) – 370 201
Gujarat, India

Sub: Payment of Storage Charges as Royalty to DPT as per Rationalization of Charges.

Ref: 1) Our Letter AKBPTL/KPT/OUT/2018-19/30 dated 01.02.2019.
2) DPT Letter EG/WK/4604/XI/PART-II-06 dated 31.01.2019.
3) Concession agreement Dated 27th June 2012
4) TAMP Order G. No. 285 dated 02.11.2010

Dear Sir,

We, M/s Adani Kandla Bulk Terminal Pvt Ltd *having its registered office at Adani House. Near Mithakali Circle, Navrangpura Ahmedabad – 380009*, without prejudice, provide our consent and acceptance to the draft storage charges, worked out by DPT as mentioned in the letter vide EG/WK/4604/XI/PART-II-06 dated 31.01.2019.

The revised Rationalized Tariff for Storage is as set out below:

Reference	Rate from 1st day to 10th day	Rate from 11th to 20th day	Rate from 21st day onwards
Revised Rationalized proposed Tariff for Storage	0.29*	0.57*	0.86*

(*The above rates will be indexed to inflation but only to an extent of 60% of the variation in Wholesale Price Index (WPI) occurring between 1 January 2010 and 1 January of the relevant year. Such automatic adjustment of tariff caps will be made every year and the adjusted tariff caps will come into force from 1 April of the relevant year to 31 March of the following year.)

adani

We undertake to pay the Royalty of 25.09 % for Storage Charges to the Concessioning Authority, either on the basis of Gross Revenue from storage or Estimated Annual Revenue Requirement for storage as per Tariff Order G. No. 285 dated 02.11.2010 with escalation, whichever is higher.

Notwithstanding anything mentioned above, we shall continue to pay all other charges as stipulated in the Tariff Order G. No. 285 dated 02.11.2010 and as per the Concession Agreement.

Notwithstanding anything mentioned above, in case of any inconsistency or disputes arising based on this undertaking, the provisions of the Concession Agreement shall prevail for all matters of such inconsistency or dispute.

For and on behalf of Adani Kandla Bulk Terminal Pvt Ltd

Name of Person: Hiren Shah
Designation: Port Head

Adani Kandla Bulk Terminal Pvt Ltd
Adani House
Nr Mithakhali Circle, Navrangpura
Ahmedabad 380 009
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ANNEXURE-86

adani

UNDERTAKING

Date:03.12.2019

To
The Chief Engineer,
Deendayal Port Trust
Annex, Administrative Office Building,
Gandhidham (Kutch) – 370 201
Gujarat, India

Sub: Payment of outstanding Storage Charges as Royalty to DPT.

Dear Sir,

We, M/s Adani Kandla Bulk Terminal Pvt Ltd *having its registered office at Adani House, Near Mithakali Circle, Navrangpura Ahmedabad – 380009*, without prejudice;

We undertake to pay the Royalty of 25.09% on Storage Charges accrued till 10th July 2018 (1 day prior to the date of MoS Letter with reference to removal of Stress) and calculated as per approved upfront tariff including escalation, as audited by au ditor of DPT, along with interest thereon, till the date of aforesaid payment.

The matter for effectiveness of Rationalizing Tariff from 11th July 2018 (date of MoS Letter with reference to removal of Stress) will be taken up with the TAMP and/or Ministry of Shipping if required. If conceded, we undertake to pay (i) Royalty of 25.09% on Storage Charges accrued post 10th July 2018 and calculated at the Rationalized Rates and along with interest thereon, till the date of aforesaid payment **OR** (ii) 25.09% of estimated annual revenue requirement for storage as per Tariff Order G.No.285 dtd 02.11.10 with escalation and along with interest thereon, till date of aforesaid payment, whichever is higher of (i) & (ii).

Notwithstanding anything mentioned above, in case of any inconsistency or disputes arising based on this undertaking, the provisions of the Concession Agreement shall prevail for all matters of such inconsistency or dispute.

For and on behalf of Adani Kandla Bulk Terminal Pvt Ltd

Kandla Bulk Terminal Pvt. Ltd. Adani

Name of Person: Hiren Shah
Designation: Port Head

Adani Kandla Bulk Terminal Pvt Ltd
Adani House
Nr Mithakhali Circle, Navrangpura
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ANNEXURE-87

resurgentindia
Debt Equity Advisory Training

Ref: RIL/KPT/2018-19/59

Date: 26.09.2018

To,

Superintending Engineer (D)
Kandla Port Trust,
Annex Administrative Building,
Gandhidham – 370201.

Subject: Developing Dry Bulk Terminal off Tekra near Tuna outside Kandla Creek at Kandla Port on BOT Basis –.Compliance of observations of Finance Dept of DPT - reg

Reference:

- Your letter vide EG/WK/4604/XI/Part II dated 31.08.2018
- RIL letter vide RIL/KPT/2018-19/48 dated 01.09.2018
- Your letter vide EG/WK/4604/XI/Part II dated 17.09.2018

Sir,

With respect to the subject matter and your letter vide EG/WK/4604/XI/Part II dated 31.08.2018, wherein you have informed that Finance Department of DPT has suggested to work out the revenue recoverable on the proposed storage charges based on the actual evacuation of cargo from the terminal and also the meets the ARR as considered by TAMP & if the proposed rate does not meet the ARR, then the proposal may be revised accordingly.

In this regard, we have requested DPT vide letter RIL/KPT/2018-19/48 dated 01.09.2018 to provide us the actual evacuation cargo in the prescribed proforma from the Concessionaire. Subsequently vide letter EG/WK/4604/XI/Part II dated 17.09.2018 you provided us the requested data.

In the view request made, we have examined the matter and by using the data provided to us, we have recalculated the revised storage charges to be submitted to TAMP; based on the actual cargo evacuation pattern of AKBTPL. The details are annexed (Annexure – 1)

This is for your information, record and further necessary action.

Regards,
For Resurgent India Limited

Authorised Signatory
(Financial Manager)

Received
18.09.2018
26/09/2018.

(172)

Annexure - 1 - TAMP Proposal for Amendment of Storage Charges for Dry Bulk terminal Off tekra

As per TAMP Order for TEKRA	Rs. Lakhs.
Revenue Requirement as per approved TAMP Order	1168.7
Revenue Requirement in Amt. Rs.	116870000

Particulars	2015-16	2016-17	2017-18	Total	Average
Total Dry Bulk Cargo	37,27,851.44	44,56,100.00	42,05,212.94	1,23,89,164.38	100.00%
Free period	13,88,894.61	13,50,381.99	20,08,611.60	47,47,888.20	38.32%
1st day to 10th day after free period	7,14,302.28	10,32,021.31	5,02,241.40	22,48,564.99	18.15%
11th day to 20th day after free period	5,67,432.46	7,79,791.50	5,17,145.10	18,64,369.06	15.05%
21st day to 30th day after free period	4,42,151.38	4,92,321.28	4,45,842.70	13,80,315.33	11.14%
31st day to 40th day after free period	3,41,767.71	2,80,387.64	2,56,666.46	8,78,821.80	7.09%
41st day to 50th day after free period	1,43,820.48	1,97,825.18	1,91,029.57	5,32,675.23	4.30%
51st day to 60th day after free period	53,836.59	1,33,618.25	88,028.43	2,75,483.27	2.22%
61st day to 70th day after free period	9,054.52	1,48,112.25	59,323.12	2,16,489.90	1.75%
71st day to 80th day after free period	43,084.80	22,167.89	40,818.15	1,06,070.84	0.86%
81st day onwards after free period	23,506.60	19,492.74	95,486.42	1,38,485.76	1.12%

Storage of Cargo belonging to: 81st day onwards after free period	71st day to 80th day after free period	61st day to 70th day after free period	51st day to 60th day after free period	41st day to 50th day after free period	31st day to 40th day after free period	21st day to 30th day after free period	11th day to 20th day after free period	1st day to 10th day after free period	Total I Stored	Assumed as Stored
										for
1.12%	0.86%	1.75%	2.22%	4.30%	7.09%	11.14%	15.05%	9.07%	52.60%	1st day to 10th day after free period
1.12%	0.86%	1.75%	2.22%	4.30%	7.09%	11.14%	7.52%		36.00%	11th day to 20th day after free period
1.12%	0.86%	1.75%	2.22%	4.30%	7.09%	5.57%			22.91%	21st day to 30th day after free period
1.12%	0.86%	1.75%	2.22%	4.30%	3.55%				13.79%	31st day to 40th day after free period
1.12%	0.86%	1.75%	2.22%	2.15%					8.09%	41st day to 50th day after free period
1.12%	0.86%	1.75%	1.11%						4.83%	51st day to 60th day after free period
1.12%	0.86%	0.87%							2.85%	61st day to 70th day after free period
1.12%	0.43%								1.55%	71st day to 80th day after free period
0.56%									0.56%	81st day onwards after free period

Calculation of Revised Storage Charges as per formula recognised by TAMP in Dry Bulk Terminal, Tuna Barge Jetty, Bunder Basin, etc.

Particulars	% Qty	Qty	Rate for days per ton per day	Rs. Lacs	Rate with Escalation
Total Cargo	14112000		10		25.67%
1st day to 10th day after free period	52.60%	7423246	0.29	213	0.36
11th day to 20th day after free period	36.00%	5080807	0.57	292	0.72
21st day to 30th day after free period	22.91%	3232862	0.86	279	1.08
31st day to 40th day after free period	13.79%	1946216	0.86	168	1.08
41st day to 50th day after free period	8.09%	1142326	0.86	98	1.08
51st day to 60th day after free period	4.83%	682056	0.86	59	1.08
61st day to 70th day after free period	2.85%	401862	0.86	35	1.08
71st day to 80th day after free period	1.55%	218154	0.86	19	1.08
81st day onwards after free period	0.56%	78872	0.86	7	1.08
Total Revenue				1168.70	

1.8.18
0.37
0.73
1.10