(To be published in Part - III Section 4 of the Gazette of India, Extraordinary)

TARIFF AUTHORITY FOR MAJOR PORTS

No. TAMP/11/2018-ICTPL **Mumbai, 28 August 2018**

NOTIFICATION

In exercise of the powers conferred under Sections 48 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Indira Container Terminal Private Limited (ICTPL) for fixation of tariff on adhoc basis for handling RORO, Steel Cargo and container at its Offshore Container Terminal (OCT) developed within the Mumbai Port Premises, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports

Case No. TAMP/11/2018-ICTPL

Indira Container Terminal Private Limited **- - -** **Applicant**

QUORUM

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

O R D E R

(Passed on this 31st day of July 2018)

This case relates to the proposal received from Indira Container Terminal Private Limited (ICTPL) for fixation of tariff on adhoc basis for handling RORO, Steel Cargo and Containers at its Offshore Container Terminal (OCT) developed within the Mumbai Port Premises.

2. The Indira Container Terminal Private Limited (ICTPL) signed a License Agreement (LA) with the Mumbai Port Trust (MBPT) on 3 December 2007 for operation and management including necessary development of facilities of Ballard Pier Station (BPS) container terminal for handling containers and construction and management of an Off-shore Container Terminal (OCT) at MBPT for handling containers. As per Article 2.2 of the LA, the MBPT has granted license to ICTPL for the following:

(i). Designing, Engineering, financing constructing, equipping, operating, maintaining, repairing, replacing the Project Facilities and Services for OCT for a period of 30 years, commencing from date of award of license.

(ii). Operating and managing BPS project for a period of 5 years commencing from the date of award of License; or 2 years from the commissioning of OCT project, whichever is earlier.

3. A brief history of fixation of tariff for operation of BPS Project for a period of 5 years from 2008-09 till 2nd December 2012 is given below:

(i). This Authority vide its Order no. TAMP/27/2008-ICTPL dated 25 November 2008 approved the interim tariff arrangement for BPS at the then existing tariff level of MBPT relevant for container handling operations. This interim arrangement was valid till 31 March 2009. The validity of interim tariff arrangement was extended from time to time till 31 March 2010.

(ii). For the tariff cycle of 3 years from 2009-10 to 2011-12, this Authority by its Order no. TAMP/9/2009-ICTPL dated 30 December 2009 effected 10% across the board reduction in the tariff approved vide Order dated 25 November 2008.

(iii). (a). For the tariff cycle of 1 year i.e. 2012-13 (upto 2 December 2012 the date of expiry of license for BPS project), the tariff was increased by 25% by Order no. TAMP/41/2011-ICTPL dated 9 April 2012.

(b). As recorded in paragraph number 14(v)(o) of the tariff Order dated 9 April 2012, the estimates for the year 2011-12 was subject to review with reference to actuals and the financial/ cost position for the years 2009-10 to 2011-12 considered in the Order dated 9 April 2012 is required to be reviewed for dealing as per clause 2.13 of the tariff guidelines of 2005.

(c). As noted from para 15.4 of the Tariff Order dated 9 April 2012, the estimates for the year 2012-13 is subject to review following Clause 2.13 of the Tariff Guidelines of 2005 in the next review of tariff of ICTPL.

4.1. In the absence of receipt of any proposal from the ICTPL for fixation of the tariff for its operations at OCT and when the ICTPL was requested to apprise us, the ICTPL vide its letter No. FIN/TAMP/2013-14/068 dated 24 June 2013 had, *inter alia*, stated that it has ceased operations at the BPS from 2 December 2012 as per the terms of the LA signed with MBPT, but could not migrate its operations to the OCT, owing to non-completion of the construction phase of the OCT, due to MBPT not fulfilling their obligations under the LA. Thus, ICTPL assured to file its proposal for tariff fixation for handling the container traffic at the OCT within the required time limit of three months, before commencement of commercial operation at OCT.

4.2. In June 2015, ICTPL came up with a proposal for fixation of tariff to be charged for RO-RO, Steel and Container Operations at OCT. The proposal was taken up on consultation with the Licensor port MBPT as well as with the relevant users/ users organisations.

4.3. In this connection, the MBPT conveyed that since the Board of Trustees of MBPT have permitted ICTPL for alternate use of the OCT for handling car carriers only for a period of one year from the date of operation on trial basis, the ICTPL's Scale of Rates should prescribe tariff only for that commodity/ facility for which MBPT Board has accorded approval for its operation.

4.4. Considering that the proposal of ICTPL filed in June 2015 was for prescription of tariff for vehicles, steel cargo as well as for containers and was for a period of three years and based on the MBPT's submission that it has accorded approval to ICTPL for handling car carriers for a period of one year, the ICTPL was requested vide our letter dated 05 August 2015 to review its proposal in line with the specific approval accorded by the MBPT and submit its revised proposal. This was followed by reminders dated 26 August 2015, 14 September 2015 and 30 October 2015.

4.5. In this connection, the ICTPL vide its letter dated 15 December 2015, *inter alia*, submitted that, as a part of the project revival process, it has submitted the required report from a consultant to MBPT and that after vetting from MBPT, it will be placed for approval of the Ministry of Shipping. Since the process would take at least 3-4 months to complete, ICTPL requested for withdrawal of its June 2015 proposal and agreed to submit a fresh proposal after the entire revival process is completed.

4.6. Accordingly, this Authority vide its Order No. TAMP/51/2015-ICTPL dated 15 January 2016 closed the ICTPL case in reference as withdrawn and decided to process the revised proposal as and when filed by ICTPL, afresh.

5. In this backdrop, the ICTPL vide its letter No. OPS/TOP/TAMP/L/15/17-18 dated 09 February 2018 has forwarded a proposal for fixation of tariff to be levied on adhoc basis for handling RoRo vessels, steel cargo and containers at the Offshore Container Terminal. The main points made by the ICTPL in its letter are summarized below:

(i). Due to continuous delay in commissioning of the project for the reasons not attributable to ICTPL, the OCT project has been languishing. This has resulted in severe losses and cost overruns for ICTPL jeopardizing its huge investments in the project as well. Pursuant to a meeting at Prime Minister's Office, ICTPL had proposed an option of rebidding the project for alternate use of the OCT berth in order to mitigate the circumstances.

(ii). This position was brought to the notice of TAMP and since the process would take 3-4 months to complete, the ICTPL had withdrawn its application vide its letter dated 15 December 2015 and stated that a fresh proposal will be submitted after the entire revival process is completed. Consequently, TAMP vide its Order dated 10 February 2016 has approved the request made by ICTPL.

(iii). The ICTPL had applied before TAMP to withdraw its application with a genuine belief that the process would be completed in 3-4 months. However, the revival process as on date is still being discussed and deliberated at the Ministry of Shipping and by various other decision making authorities/ agencies of Government of India. Thus, the approval to a concrete revival plan is still awaited. In the light of this, the delay in completing this process is completely beyond the control the ICTPL.

(iv). While the deliberations as mentioned above were taking place, the ITCPL has continued to operate the terminal with Ro-Ro car carriers alongwith certain trial operations for handling steel cargo vessels as well, as an interim arrangement, at the rates as below :

(a). Berthing charges – 1.3 times the MBPT's tariff.

(b). Wharfage charges – same as MBPT's tariff.

(v). The above rates are proposed by ICTPL merely as an *ad hoc* arrangement as the revival process is underway. The above rates are also adopted after taking consensus of Trade/ concerned users utilizing the terminal. It is noteworthy to mention that the earlier proposal dated 29 June 2015 also envisaged rates at 80.73% over and above current tariff rates charges by MBPT.

(vi). In the light of the above and especially in terms of the last Order passed by TAMP, where liberty was granted to ICTPL to apply afresh, ICTPL requests TAMP to approve the above rates on adhoc basis for operation of Ro-Ro car carriers, steel cargo vessels and containers with effect from 29 June 2015 (being the date of our earlier proposal to TAMP) as an interim arrangement until the revival process is completed.

(vii). It is submitted that it would be difficult for ICTPL to provide any financial/ traffic projections at the moment to substantiate the above proposed rates since the revival process is yet to be completed and clarity in this respect is yet to be attained.

(viii). It is also reiterated that the rationale behind proposing the above rates is that the facility is new and has been languishing for substantial period, huge amount of investment has been made, and the revival process deliberations are yet to conclude etc.,

(ix). It is submitted that such interim measures would assist ICTPL to mitigate the circumstances. It is also requested that liberty be given to ICTPL to apply afresh once the revival process is completed.

(x). Copies of the letters received from trade / users of the terminal are furnished by ICTPL, which reflects that the users are agreeable for payment of berth hire charges for ICTPL berth at 30% more than MBPT charges.

(xi). The Authority is requested to approve the above rates on adhoc basis for operation of Ro-Ro car carriers and steel cargo vessels with effect from 29 June 2015 (i.e. the date of its first proposal) as an interim arrangement until the revival process is completed.

6.1. On a preliminary scrutiny of the proposal, it was seen that additional information/ clarification is required from ICTPL. Accordingly, the ICTPL was requested vide our letter dated 26 February 2018 to clarify/ furnish information**.** The ICTPL has responded vide its letter dated 15 March 2018. The information sought and response of ICTPL thereon is tabulated below:

Sl. No.	Information/ Clarification sought	Response of ICTPL
(i).	In the earlier proposal of ICTPL dated 29 June 2015, the proposal of ICTPL was for prescription of tariff for vehicles, iron & steel materials and containers to be levied for a period of three years. However, the MBPT had then communicated that it has accorded approval to ICTPL for handling only car carriers for a period of one year. It was in this context, that we had vide our letter No. TAMP/51/2015-ICTPL dated 05 August 2015 requested ICTPL to review its proposal in line with the specific approval then accorded by the MBPT and submit its revised proposal.	As informed in our earlier communications, since the rebidding process was underway, ICTPL's earlier proposal dated 29.06.2015 was not further persuaded. The reasons & circumstances for the same are already explained in our earlier letter No. OPS/TOP/TAMP/ L/15/17-18 dated 09.02.2018.
(ii)	The ICTPL has now made a request to approve the rates on adhoc basis for operation of Ro-Ro car carriers and steel cargo vessels with effect from 29 June 2015. However, the ICTPL has not furnished any document to reflect the approval of MBPT allowing ICTPL to handle RoRo car carriers and steel cargo vessels. The ICTPL to furnish the relevant document reflecting the approval of MBPT allowing ICTPL to handle Ro-Ro car carriers and steel cargo vessels, with effect from 29 June 2015, with the period approved by MBPT.	MBPT vide TR No. 26 dated 30.05.2015 has accorded approval to permit ICTPL for alternate use of the Offshore Container Terminal Berths (OCT Berth) for handling RO-RO vessels for a period of one year from the date of operation on trial basis with tariff at 1.3 times of MBPT SOR with a Revenue Share of 55% to MBPT & 45% to ICTPL. This was communicated to ICTPL by MBPT vide its letter No. CE CF226 (CTP)/366 dated 25.06.2015. Although the operations at our OCT Berths commenced by handling 1st vessel "Hoegh Seoul" on 20.07.2015, the permission of MBPT was dated 25.06.2015 and hence our request for tariff fixation with effect from 29.06.2015 is after MBPT permission and falls within permission period. The permissions were further ratified/ extended by MBPT vide it's below mentioned office circulars (Trade Circulars): (a). TM/P/19-28/31 of 1996-97 dated 14.10.2015. (Circular reflects that Customs has notified the complete area of OCT as a place for unloading/ loading of import/ export vehicles for a period of 1 year from 07.10.2015 to 06.10.2016). (b). TM/P/19-28/21 of 1996-97 dated 10.10.2016. (Circular reflects that ICTPL has been permitted to handle Car-carriers at OCT berth) (c). TM/P/19-28/24 of 1996-97 dated 07.10.2017 (Circular reflects that the Customs has notified the complete area of OCT as a place for unloading/ loading of import/ export vehicles for a period of 1 year from 07.10.2017

(iii)	ICTPL has submitted that it has been operating the terminal with Ro-Ro car carriers alongwith certain trial operations for handling steel cargo vessels as well, as an interim arrangement, at the rates as indicated below :	As stated in our earlier communication and as stated above, in view of rebidding process underway, the same was not persuaded further. However, the interim operations have been carried out (with Berthing Charges being 1.3 times of MBPT Tariff & Wharfage Charge being same as that of MBPT Tariff) on the basis of MBPT's approval and consent of the Trade/ Users. In this connection, it is further submitted as under.
	(a). Berthing charges – 1.3 times the MBPT's tariff.	(a). The applicable Tariff Guidelines of 31.03.2005, Clause 2.17.3 inter-alia permits ad-hoc rates in the interim period which is to be derived based on existing notified tariffs for comparable services/ cargo and it must be mutually agreed upon by the Port/ Terminal and the concerned users. For ready reference, relevant Clause 2.17.3 of Tariff Guidelines is reproduced below: *"2.17.3- The ad-hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable service/cargo and it must be mutually agreed upon the Pot / Terminal and the concerned users".*
	(b). Wharfage charges – same as MBPT's tariff. The rationale stated by ICTPL is that the facility is a new facility. In this context, the attention of ICTPL is invited to clause 2.12 of the Tariff Guidelines of 2005, which states as under : "When a new facility is commissioned or existing facilities are privatised by any port trust, the initial tariff to be allowed will not exceed the existing tariff level at the same port for comparable facilities. If such comparison is not available, prevailing tariff at comparable nearby port will be considered as the reference level. The initial tariff so adopted will be valid for the first year of operation where after revised tariff will be fixed based on the admissible cost and investment of the private operator. If it is established by the private operator that adopting the existing tariff of port trust will cause hardship to him in view of a higher level of investment made, then a separate cost based tariff will be allowed to him right from the commencement of commercial operations".	(b). ICTPL has created an excellent facility in providing efficient services. By virtue of new separate facilities, the Trade and concerned users are getting advantage of priority berthing and they have willingly agreed with present tariff (Wharfage @ MBPT SOR Rate and Berth Hire Charges @ 1.3 times of MBPT SOR Rate) being levied by ICTPL. In this connection, ICTPL has also submitted copies of consent letters (inter-alia expressing their satisfaction for excellent facilities and tariff of 1.3 times of MBPT rates) from 3 concerned users namely (i) MOL. India Pvt. Ltd., (ii) Parekh Marine Service Pvt. Ltd. & (iii) M. Dinshaw & Co. Pvt. Ltd). As stated above, this being purely adhoc operations, it would not be possible to prepare revised firmed up tariff proposal & submit it to the Authority at this stage.
	(c). The ICTPL to comply with the guideline in toto and revise the proposal suitably and file the revised proposal before the Authority.	(c).Considering the foregoing explanation and facts & Circumstances, we request TAMP not to insist on detailed tariff proposal at this Juncture and convey its approval to levy of tariff by ICTPL (Wharfage @ MBPT SOR Rate and Berth Hire charges @ 1.3. times of MBPT SOR Rates) as per its request in earlier letter dated 09.02.2018.

<table>
<tr>
<td>(iv)</td>
<td>Though the ICTPL has expressed its inability to provide any financial/ traffic projections, ICTPL to furnish the actual financial and traffic position in the prescribed formats for the years 2015-16 and 2016-17 and for the 11 months period upto February 2018.</td>
<td>The actual financial and traffic position in the prescribed formats for the year 2015-16 and 2016-17 and for the 11 months period up to February 2018 is as follows:
<table>
<tr><th>Sl. No.</th><th>Particulars</th><th>2015-16</th><th>2016-17</th><th>2017-18 (upto Feb 18)</th></tr>
<tr><td></td><td>Traffic Handled</td><td></td><td></td><td></td></tr>
<tr><td>1.</td><td>In Tonnes</td><td>81,302</td><td>27,542</td><td>1,88,664</td></tr>
<tr><td>2.</td><td>In TUES</td><td>153</td><td>320</td><td>-</td></tr>
<tr><td>3.</td><td>Vehicle (Nos.)</td><td>1,08,673</td><td>2,01,268</td><td>2,05,597</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td></td><td>Financial Performance</td><td colspan="3">₹ in crores</td></tr>
<tr><td>Sl..</td><td>Particulars</td><td>2015-16</td><td>2016-17</td><td>2017-18</td></tr>
<tr><td>(i).</td><td>Operating Income</td><td></td><td></td><td></td></tr>
<tr><td></td><td>Cargo related Charges (Handling charges)</td><td>32.75</td><td>64.88</td><td>71.93</td></tr>
<tr><td></td><td>-Vessels related charges (Berth Hire Charges)</td><td>8.09</td><td>15.29</td><td>17.57</td></tr>
<tr><td></td><td>-Other Charges (including Storage charges)</td><td>-</td><td>-</td><td>-</td></tr>
<tr><td></td><td>Total</td><td>40.84</td><td>80.17</td><td>89.50</td></tr>
<tr><td>(ii)</td><td>Finance & Misc. Income</td><td>0.07</td><td>0.08</td><td>0.07</td></tr>
<tr><td>(iii)</td><td>Aggregate total income [(i) + (ii)]</td><td>40.91</td><td>80.25</td><td>89.57</td></tr>
<tr><td>(iv)</td><td>Operating expenditure excluding Depreciation & Royalty/Revenue Share</td><td>3.51</td><td>3.95</td><td>5.05</td></tr>
<tr><td>(v)</td><td>Depreciation</td><td>0.44</td><td>27.65</td><td>36.32</td></tr>
<tr><td>(vi)</td><td>Royalty/Revenue Share</td><td>22.46</td><td>44.09</td><td>49.23</td></tr>
<tr><td>(vii)</td><td>Finance & Misc. Expenditure</td><td>-</td><td>55.97</td><td>77.07</td></tr>
<tr><td>(viii)</td><td>Aggregate total Exp. [(iv) +(v) +(vi) + (vii)</td><td>26.42</td><td>131.66</td><td>167.67</td></tr>
<tr><td>(ix)</td><td>Net Surplus/(Def-ecit) [(viii) = (iii) – (vii)]</td><td>14.49</td><td>(51.41)</td><td>(78.10)</td></tr>
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<td>(v)</td>
<td>A copy of the Audited Annual Accounts of ICTPL for the past three years viz., 2014-15 to 2016-17 and financials up to February 2018 certified by a Charted Accountant to be furnished.</td>
<td>Copy of the audited financials or the financial years 2014-15: 2015-16 and 2016-17, duly certified by the Chartered Accountant is furnished.</td>
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<td>(vi)</td>
<td>The ICTPL to furnish a full-fledged draft Scale of Rates with conditionalities governing the application of Rates.</td>
<td>Since detailed firmed tariff proposal cannot be prepared at this stage as explained in foregoing paragraphs, full-fledged draft Scale of Rates is not being submitted at this stage. It is requested to not insist on the same at this juncture.</td>
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<tr>
<td>(vii)</td>
<td>ICTPL to indicate a definite period up to which approval is being sought for levy of tariff</td>
<td>Considering the present progress and status of rebidding process, it is expected that it will be put for implementation in next 4 to 5 months and thereafter, period of 6 to 7 months will be required for bid evaluation and award by Mumbai Port Trust. ICTPL therefore, requests TAMP to provide approval for the tariff up to 31.03.2019, with a liberty to ICTPL to apply the same tariff till completion of rebidding process, if in case the rebidding process gets spilled over beyond 31.03.2019. Upon completion of rebid process, fresh tariff proposal will be submitted in line with the terms of new/modified License Agreement</td>
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(viii)	The tariff guidelines of 2005 stipulate fixation of tariff based on the cost plus return on capital employed approach. The proposal of ICTPL is to enable it levy Berthing charges @ 1.3 times the MBPT's tariff and Wharfage charges as same as MBPT's tariff. The ICTPL to establish as to how its proposal is within the frame work of the 2005 Guidelines.	Refer to explanation given in (iii) above.
(ix)	The letters of consent enclosed by ICTPL reflect the consent for the usage of OCT for levy of berth hire @ 1.3 times more than MBPT charges for Ro-Ro cargo operations only. No consent letter has been made available specifically indicating the consent for levy of berth hire @ 1.3 times more than MBPT charges for handling of steel cargo vessels. ICTPL to furnish the suitable consent letter for levying of charges.	The consent letters given by 3 users is a testimony of user's happiness and willingness to pay more for equality of facilities & services. It is to state that 2 users out of these 3 users namely Parekh Marine Services Pvt. Ltd & M. Dinshaw & Co. Pvt. Ltd. have also handled steel vessels at OCT.
(x)	The ICTPL to furnish an undertaking to the effect that in the event that the final rates to be approved by the Authority are lower than the tariff that is being levied by the ICTPL at present, it agrees to refund the excess money collected, to the users.	In view of all the facts & circumstances and especially the huge financial hardship & losses being caused/ suffered by us and also the present interim operations and levy of 1.3 time tariff is strictly within MBPT Board approval and with the consent of Trade/ users and TAMP is requested to not insist any undertaking. However, it has stated that it will honor TAMP's directions and abide by tariff rates as may be approved and fixed by TAMP prospectively, if TAMP orders any changes in its final order.

6.2. While furnishing the above said information, the ICTPL has also made the following additional submissions:

(i). ICTPL has created state of the art infrastructure (2 berths, connecting approach trestle & other ancillary facilities) with huge investment of about ₹ 850 Crores. However, such a sizable infrastructure could not be put to its intended use, in timely manner due to delay in implementation of the entire project owing to non-availability of project site, non-completion of dredging & delay in security clearances for equipment supplier/ vendor. As per the agreed schedule in the License Agreement dated 03.12.2007, a period of 3 years was provided for completion of the entire project & commencement of commercial operations in full scale which could not be achieved due to various delays and project has been languishing for more than 8 years.

(ii). Nonetheless, having regard to the already developed infrastructure (at huge investment of ₹ 850 Crores) and with a view to avoid idling of such a massive infrastructure, MBPT Board permitted alternate use of OCT Berths for handling of RORO cargo for a period of one year which was further extended from time to time. This was purely an interim arrangement on adhoc basis and for this MBPT has stipulated enhanced Revenue Share of 55% (as against 35.064% agreed in License Agreement).

(iii). In this connection, it would be noteworthy that:

(a). Alternate use of created infrastructure is being done with a sole purpose to avoid idling of assets and avoid infructuous investment, purely on adhoc basis as an interim arrangement.

(b). The Revenue Share of 55% being collected by MBPT is without any basis in the License Agreement. But keeping the large interest, we have gone ahead with such stipulation of adverse revenue share during adhoc operation.

(c). There is neither commitment/ exclusivity of any cargo from MBPT nor any projections can be made since there is no certainty of type as well as of quantum of cargo for such interim operations and it is largely at the discretion of MBPT.

(d). Although major infrastructure has been completed by ICTPL which is adequate enough for temporary interim operations of this nature (i.e. RORO, Steel, etc.), exact investment on the project cannot be fully ascertained at this state since part of the facilities are still to be developed.

(iv). In the aforementioned circumstances, it would not be possible to prepare firmed up tariff proposal on a cost plus return on capital employed approach, strictly based on the framework of Tariff Guideline of 2005. Further, as informed earlier, with the support of PMO and Ministry of Shipping, the project is being rejigged by changing the cargo mix, for which rebidding is under process whereafter exact contours of the project (like Revenue Share, exact investment, type of cargo, etc.) will be known and detailed tariff proposal would be possible.

(v). ICTPL has been operating the facilities for the last 2 years, purely on adhoc basis as per MBPT permission. MBPT has also permitted handling of few steel vessels and passenger vessels on a trial basis with the consent of Trade/ user.

(vi). From the financial of last 2 years, after giving 55% Revenue-Share to MBPT and operational expenses, ICTPL is hardly able to service interest on the debt to the extent of only 35% to 40% of current interest. ICTPL has incurred huge expenses on the project and suffered severe losses.

7.1. We have vide our letter dated 27 February 2018 forwarded the ICTPL proposal dated 09 February 2018 to MBPT for its comments. After a reminder dated 14 March 2018, the MBPT has responded vide its letter no. FA/ACC/245/(II)/1706 dated 16 March 2018. The submissions made by MBPT are as follows:

(i). The MBPT Board vide TR no. 59 dated 28.9.2016 has accorded the approval for the following:

(a) continuing alternative use of OCT for handing the Car carriers.

(b) with revenue share @ 72% to MBPT and 28% to ICTPL, if ICTPL levy tariff @ MBPT Scale of Rates (SOR) and If ICTPL levy @ 130% of tariff of MBPT Scale of Rates (SOR), revenue share @ 55% to MBPT and 45% of ICTPL.

(c). this arrangement will be operational till final decision is taken about re-organisation of OCT project.

7.2. The MBPT has also stated that the Board has authorized the Chairman of MBPT to permit alternate use of OCT for all types of cargo and passenger vessels only in highly exceptional circumstances when Port's berth are occupied.

7.3 In view of the above position, since the arrangement is an interim measure and ICTPL has furnished consent of the users, the MBPT has requested that the following ad-hoc rates as sought by ICTPL until the revival process is completed, may be considered for approval.

(a). Berthing Charges – 1.3 times of MBPT's tariff

(b). Wharfage charges – Same as MBPT's tariff

7.4. The MBPT has furnished copy of the Board resolution in this regard.

8. In accordance with the consultative procedure followed, a copy of the ICTPL proposal dated 09 February 2018 and a copy of the ICTPL letter dated 15 March 2018 (excluding copy of the annual accounts of ICTPL), were forwarded to users/ user organizations vide our letter dated 04 April 2018 seeking their comments. The Parekh Marine Services Limited has given its comments, wherein it has given its consent to the tariff as proposed by ICTPL in its proposal dated 15 March 2018. The other users have given their consent to the proposal of ICTPL at the joint hearing held on 20 April 2018.

9. Based on a further scrutiny of the proposal dated 09 February 2018 and the information/ clarification furnished by ICTPL vide its letter dated 15 March 2018, the ICTPL was requested to furnish additional information/ clarification vide our letter dated 16 April 2018. The ICTPL vide its letter dated 25 April 2018 has responded. A summary of the additional information/ clarification sought and reply furnished by ICTPL thereon is tabulated below:

<table>
<tr><th>Sl. No.</th><th>Information/ clarification sought</th><th>Reply furnished by ICTPL</th></tr>
<tr><td>1.</td><td>General:</td><td></td></tr>
<tr><td>(i).</td><td>Since the year 2017-18 is already over, the Indira Container Terminal Private Limited (ICTPL) to furnish actual traffic/ financial position for the year 2017-18, as certified by a Chartered Accountant.</td><td>The Financial and Traffic projections for the financial year 2017-18 is as follows:
<table>
<tr><th>Sl. No.</th><th>Particulars</th><th>2015-16</th><th>2016-17</th><th>2017-18</th></tr>
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<tr><td></td><td>Financial Performance</td><td colspan="3">₹ in crores</td></tr>
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<tr><td></td><td>-Other Charges (including Storage charges)</td><td>-</td><td>-</td><td>-</td></tr>
<tr><td></td><td>Total</td><td>40.84</td><td>80.17</td><td>98.91</td></tr>
<tr><td>(ii)</td><td>Finance & Misc. Income</td><td>0.07</td><td>0.08</td><td>0.08</td></tr>
<tr><td>(iii)</td><td>Aggregate total income [(i) + (ii)]</td><td>40.91</td><td>80.25</td><td>98.99</td></tr>
<tr><td>(iv)</td><td>Operating expenditure excluding Depreciation & Royalty/Revenue Share</td><td>3.51</td><td>3.95</td><td>6.66</td></tr>
<tr><td>(v)</td><td>Depreciation</td><td>0.44</td><td>27.65</td><td>37.96</td></tr>
<tr><td>(vi)</td><td>Royalty/Revenue Share</td><td>22.46</td><td>44.09</td><td>54.40</td></tr>
<tr><td>(vii)</td><td>Finance & Misc. Expenditure</td><td>-</td><td>55.97</td><td>85.73</td></tr>
<tr><td>(viii)</td><td>Aggregate total Exp. [(iv) +(v) +(vi) + (vii)</td><td>26.42</td><td>131.66</td><td>184.75</td></tr>
<tr><td>(ix)</td><td>Net Surplus/(Def-ecit) [(viii) = (iii) –(vii)]</td><td>14.49</td><td>(51.41)</td><td>(85.76)</td></tr>
</table></td></tr>
<tr><td>(ii).</td><td>The Note to financial statement for the year ending March 31 2017 (Audited Annual Accounts) of the ICTPL indicates a contingent liability on account of the wharfage charges of ₹.1610.87 lakhs (previous year ₹ 540.34 lakhs) and ₹. 492.15 lakhs towards lease rentals payable to MBPT. The ICTPL to furnish a brief note highlighting each of the aspects for which contingent liability has been reported.</td><td>Revenue Shares-Contingent Liability
Mumbai Port Trust (MBPT) has permitted vide their TR No. 26 dated 30.05.2015, interim operations for handling alternate cargo i.e. ROFO cargo and few steel vessels, from our Offshore Container Terminal (OCT) berths since June 2015 with revenue share at the rate of 55% to MBPT on the assumption that ICTPL will charge 1.3. times of the prevailing MBPT Schedule of Rates.

Based on discussions with the Trader/ Users of the facility, Berth Hire Charges were charged at 1.3 times of the MBPT SOR while Wharfage was charged at the existing MBPT SOR.</td></tr>
</table>

The contingent liability is on the account of lesser revenue share paid to MBPT, arising out of not charging the Trade/ Users 1.3 times the MBPT Tariff rate in case of Wharfage charges has been reflected in the Notes to the Financial Accounts.

There has been delays on the part of MBPT in handing over the required area for storage of cargo. These delays continue till date. Only a part of the land area has been handed over. As such, the Company is disputing the Lease Rental charged by MBPT on the part of the land handed over by them. Hence the said Lease Rental disputed by ICTPL has been reflected as Contingent Liability in the Notes to the Financial Accounts of the Company.

Both the amount of Revenue Share and the Disputed amount of Lease Rentals shown under Contingent Liability has not been considered as Operational Expenses.

2. Traffic Handled:

(i) The ICTPL has furnished the year wise traffic handled during the last three years i.e. 2015-16, 2016-17 and 2017-18 (upto Feb. 2018) at Annexure-4 of the proposal. In this regard, ICTPL to furnish detailed breakup of the actual traffic handled during the last three years including upto 31 March 2018.

The detailed breakup of the actual traffic handle during the financial year 2015-16; 2016-17 & 2017-18 is as follows:

No.	Commodity	2015-16		2016-17		2017-18	
		Foreign	Coastal	Foreign	Coastal	Foreign	Coastal
1	Ro-Ro Carriers (in nos.)	108673	-	201268	-	227750	-
2	Iron & Steel materials (Import) (in tonnes)	81302	-	10545	-	166217	-
3	Iron & Steel materials (Export) (in tonnes)	-	-	16997	-	22447	-
4	General containers (loaded) (in TEUs)	111	-	103	-	-	-
5	General containers (Empty) (in TEUs)	42	-	217	-	-	-

3. Operating Income :

(i) On a comparison of the operating Income for the last three years i.e. 2015-16, 2016-17 and 2017-18 (upto Feb. 2018) furnished by ICTPL at Annexure-4 of the proposal, vis-a-vis the Audited Annual accounts for the years 2015-16 & 2016-17, it is seen that there is wide variation in the figures of operating income between Audited annual accounts and Annexure-4 of the proposal, as given below.

Financial year	As per Annexure -4 of the Proposal.	Statement of Profit & Loss. (Audited Annual Accounts)
2015-16	₹. 40.84 Cr.	₹. 66.32 crores
2016-17	₹. 80.17 Cr.	₹. 40.68 crores

In this connection, ICTPL to reconcile the variation in operating income between Annexure-4 of the proposal and Audited

It is requested to refer to Schedule 13 of our Audited Financial Accounts for the year ended March 31, 2017.

Revenue is as under –

Particulars	For the year ended March 31, 2017 (₹ In lakhs)	For the year ended March, 31 2016 (₹ In lakhs)
Revenue from Construction	46.60	4,794.39
Income from RORO operations and Wharfage charge	**3,607.56**	**1,837.69**
Total	**4,068.16**	**6,632.07**

There is a variation between the Revenue reflected in the Annual Audited Finances and in the proposal submitted by us to the Authority.

We would like to clarify as under:

annual Accounts with a reconciliation statement giving reasons for variation. Further, the detailed breakup of operating income generated during the last three years i.e. 2015-16, 2016-17 and 2017-18 to be furnished.

The financial statements, for the year ended March 31, 2017, has been prepared in accordance with Indian Accounting Standards (Ind AS) notified under section 133 of the Companies Act, 2013, read together with paragraph 7 of the Companies (Accounts) Rules, 2014 (Indian GAAP).

In accordance with the principles in Appendix A to Ind AS 11 relating to accounting for Service Concession Agreements, the Company is required to recognize Construction Revenue in its Statement of Profit & Loss. As per the said accounting standard, Revenue needs to be recognized with a Margin on the construction cost incurred by the company which is estimated at 1% on construction cost.

Consequently, the financial statement for the Financial Year 2015-16 has also been restated in accordance with the above notification with retrospective effect.

The said Income is a notional Income and is only an Accounting Adjustment. The said Construction Revenue is not realizable from any Customer or User. As such the said Revenue has not been considered in our Annexure-4 of the proposal submitted by us.

The detailed break up of operating income during the last three financial years is as follows:

(₹ in lakhs)

No.	Commodity	2015-16		2016-17		2017-18	
		Foreign	Coastal	Foreign	Coastal	Foreign	Coastal
1	**Wharfage Revenue**						
	- RoRo Carriers	3118.81	-	6452.79	-	7586.65	-
	- Iron & Steel Materials (Import)	156.00	-	10.65		360.41	-
	- Iron & Steel Materials (Export)	-	-	24.57	-	-	-
	Total Cargo handling Income	**3274.81**	-	**6488.01**	**-**	**7979.51**	**-**
2	**Container ** Handling Income**	-	-	-	-	-	-
3	**Vessel Related income (Berth hire**						
	- RoRo Carriers	752.42	-	1463.99		1743.00	-
	- Steel cargo	56.51	-	64.80		168.66	-
	Total Vessel related income	**808.94**	-	**1528.79**		**1911.67**	**-**
	Total Operating income (1+2+3)	**4083.75**	-	**8016.80**		**9891.17**	**-**

Income from RORO operations indicates the net revenue received i.e. total revenue received less revenue share to MBPT @ 55%. The reconciliation statement as given by ICTPL is as follows:

Commodity	2015-16		2016-17		2017-18	
	Foreign	Coastal	Foreign	Coastal	Foreign	Coastal
Revenue from operations (A)	4083.75	-	8016.80	-	9891.17	-

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<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Revenue share @ 55% (B)</td><td>2246.06</td><td>-</td><td>4409.24</td><td>-</td><td>5440.14</td><td>-</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Net Revenue earned</td><td>1837.69</td><td>-</td><td>3607.56</td><td>-</td><td>4451.03</td><td>-</td></tr>
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<td>(ii).</td>
<td>Though the other income to the tune of ₹.7.23 Lakhs and ₹.7.84 Lakhs as reflected in the Annual Accounts for the year 2015-16 and 2016-17 respectively, has been considered as ‘Finance & Miscellaneous income’ in the Annexure 4 of its proposal by ICTPL, it appears that the other income is towards interest income which will have to be excluded from the Annexure – 4, since interest expenditure is not treated as an item of expenditure in tariff fixation.</td>
<td>Noted.</td>
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<td>(iii).</td>
<td>The ICTPL to also furnish working to arrive at the operating income as considered at Annexure-4 of its proposal, taking into account the year wise traffic and the tariff levied on the said traffic for each of the years 2015-16 to 2017 -18.</td>
<td>Wharfage charges calculated as per MBPT SoR based on percentage of FOB/CIF value of the vehicles.

Wharfage collection for steel cargo is as follows:
<table>
<tr><th></th><th colspan="3">2015-16</th><th colspan="3">2016-17</th></tr>
<tr><th></th><th>Qty</th><th>Rate in ₹ per tonne</th><th>Total (₹ in lakhs)</th><th>Qty</th><th>Rate in ₹ per tonne</th><th>Total (₹ in lakhs)</th></tr>
<tr><td>Iron & Steel Materials (Import)</td><td>81302</td><td>191.88</td><td>156.00</td><td>-</td><td>191.88</td><td>-</td></tr>
<tr><td>Iron & Steel Materials (Export)</td><td>-</td><td>144.55</td><td>-</td><td>16997</td><td>144.55</td><td>24.57</td></tr>
<tr><td>Iron & Steel Materials (Import) (TP SEZ cargo)</td><td>-</td><td>-</td><td>-</td><td>10545</td><td>101.00</td><td>10.65</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>Total</td><td>81302</td><td></td><td>156.00</td><td>27542</td><td></td><td>35.22</td></tr>
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<tr>
<td>4.</td>
<td>Operating Expenditure:</td>
<td></td>
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<td>(i)</td>
<td>The Annexure-4 of the proposal, reflects a total expenditure (including royalty/ revenue share and depreciation) of ₹. 26.42 crores and ₹. 131.66 crores for the years 2015-16 and 2016-17 respectively, whereas the annual audited accounts of ICTPL reflects a total expenditure of ₹.51.50 crores and ₹. 92.17 crores. ICTPL to furnish a reconciliation statement reconciling the variation in operating expenses between ICTPL proposal and Annual Accounts for each of the years 2015-16 to 2017-18 giving reasons for variations.</td>
<td>Reconciliation statement is furnished by ICTPL.</td>
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<td>(ii)</td>
<td>In the Annual Accounts, it is seen that there is an expenditure of ₹.47.47 crores during 2015-16 and ₹.4.57 crores during 2016-17 under the head ‘Construction Cost’, which includes Sub-contracting expenses, License fee, Legal and Professional charges and other administrative expenses. The ICTPL to clarify the nature and the purpose of the expenditure incurred for each of items viz. sub-contracting expenses, License fee,</td>
<td>Construction Costs are costs incurred on Project Development work. They are required to be</td>
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<tr><td></td><td>Legal and Professional charges and other administrative expenses.</td><td rowspan="2">reflected in the Statement of Profit and Loss in accordance with the principles in Appendix A to Ind IAS 11 relating to accounting for Service Concession Agreements. The said costs have not been included in Annexure -4 of the proposal submitted to the Authority.</td></tr>
<tr><td>(iii).</td><td>In addition to License fee, Legal and Professional charges booked under the head “Construction cost”, separate costs items for i.e. Legal and profession fees and lease rentals are also booked under the head “Other expenses” in the Annual Accounts. ICTPL to explain the difference in the nature of expenses booked in respect of legal and profession fees and license fee under the head “Other expenses” from the expenses booked under the head “Construction cost”.</td></tr>
<tr><td>(iv).</td><td>An amount of ₹.27.65 crores is shown as deprecation in Annual Accounts which includes an amount of ₹.27.23 crores towards amortization of intangible assets viz. Software and Port Rights. The ICTPL to explain the nature of assets capitalized as “Port Rights” in the intangible assets and the basis of arriving at the charge of amortization of ₹.27.23 crores towards port rights during the year 2016-17.</td><td>During the financial year 2016-17, the company has capitalized the expenditure of Rs.73560.44 lakhs, as intangible asset being the right to operate the berth facility for a fee. This was done pursuant to the ongoing negotiations and discussions around the fact that the project could not be commissioned as per the original plan. Accordingly, the amortization of the intangible asset has started during the year along with cessation and capitalization of interest during the construction period.</td></tr>
<tr><td>(v).</td><td>In the Annexure-4 of the proposal, an amount of ₹. 22.46 crores and ₹ 44.09 crores has been shown as the Royalty/ Revenue Share expenditure for the years 2015-16 and 2016-17 respectively. However, the expenditure towards the Royalty/ revenue share payable by ICTPL is not seen to be explicitly indicated in the Audited Annual account of ICTPL. In this connection, ICTPL to clarify where the Royalty/ revenue share expenditure is reflected in the Audited Annual Accounts of ICTPL for each of the year.</td><td>As stated above and as per the guidelines issued by the Institute of Chartered Accountants, Revenue is required to be reflected in the Statement of Profit and Loss as Net of Revenue Share</td></tr>
<tr><td>(vi).</td><td>Further, as per clause 2.8.1 of the 2005 Tariff Guidelines, which is applicable incase of ICTPL, royalty / revenue share will be taken as cost for tariff fixation, only in those BOT cases where bidding process was finalized before 29 July 2003. Since the bidding process in respect of ICTPL project was after the said date, the ICTPL to exclude royalty / revenue share from its tariff proposal.</td><td>Noted.</td></tr>
<tr><td>5.</td><td>Capital Employed:</td><td></td></tr>
<tr><td>(i)</td><td>ICTPL to furnish the details of capital employed by giving reference to audited Balance Sheet as on 31-3-2016, 31-3-2017 and 31-3-2018. The difference, if any, from the figures given in the Annual Accounts vis-à-vis figures to be furnished to be reconciled, giving reasons for difference, if any.</td><td>Details of capital employed is as follows:
(₹ in lakhs)
<table>
<tr><th rowspan="2">No.</th><th rowspan="2">Particulars</th><th colspan="3">Capital Employed as on</th></tr>
<tr><th>31.03.2016</th><th>31.03.2017</th><th>31.03.2018</th></tr>
<tr><td>1</td><td>Fixed assets at the beginning of the year</td><td>3192.73</td><td>3194.42</td><td>76952.38</td></tr>
<tr><td>2</td><td>Additions during the year</td><td>1.69</td><td>73762.80</td><td>68.32</td></tr>
<tr><td>3</td><td>Deletion during the year</td><td>-</td><td>4.84</td><td>5.69</td></tr>
</table></td></tr>
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4	Fixed assets at the end of the year	3194.42	76952.38	77015.01
5	Cumulative depreciation at the beginning of the year	556.63	601.03	3361.19
6	Depreciation during the year	44.40	2760.16	3790.36
7	Cumulative depreciation at the end of the year	601.23	3361.19	7151.55
8	**Net Block of assets**	**2593.39**	**73591.19**	**69863.46**
9	**Working Capital**			
	Debtors	908.59	503.79	655.05
	Inventory	-	-	-
	Cash balance	632.50	1618.29	2416.83
	Current liabilities	885.52	740.38	405.10
	Net Working Capital	**655.57**	**1381.70**	**2666.78**
	Capital Employed	**3248.96**	**74972.89**	**72530.24**

6.	**Tariff – Scale of Rates:**	
	The ICTPL has approached TAMP for approval of tariff for Ro-Ro, Containers, Passenger & Other clean cargo. Section 48 of the Major Ports Trust, Act 1963 mandates the Authority to notify statement of conditions governing the application of tariff, apart from notification of tariff. In view of the above, the ICTPL to furnish the draft Scale of Rates along with conditionalities governing the tariff for handling Ro-Ro, Containers, Steel cargo & Other cargo, if any, and passenger vessel.	As stated above, this being purely ad-hoc operations, we request that ICTPL be allowed to follow the MBPT Scale of rates along with conditionalities governing the tariff for handling Ro-Ro, Containers, Steel Cargo & other cargo, except with only change that Berth hire charges shall be 1.3 times of berth hire charges as per MBPT SoR.

10.1. Simultaneously, the MBPT was also requested vide our letter dated 16 April 2018 to confirm the traffic figures of dry cargo (in tonnes), containers (in TEUs) and Vehicles (in nos.), as furnished by ICTPL vide its letter dated 16 March 2018. The MBPT was also requested to furnish detailed breakup of traffic handled by ICTPL during the years 2015-16 to 2017-18.

10.2. The MBPT vide its letter dated 05 May 2018 has furnished the traffic details of ICTPL, based on the monthly traffic summary as compiled by it, as received from ICTPL.

I. Off –shore Container Terminal Traffic handled during 2015-16, 2016-17 and 2017-18

Cargo	**2015-16**			**2016-17**			**2017-18**		
	Import	**Export**	**Total**	**Export**	**Import**	**Total**	**Import**	**Export**	**Total**
Automobile-tonnes (units)	8394 (1042)	153118 (104292)	161512 (105334)	24600 (2444)	279677 (192876)	304277 (195320)	25150 (1967)	335601 (219116)	360751 (221083)
Iron & Steel	81302	0	81302	2191	17910	20101	171981	22447	194428
Containers	75	1131	1206	272	1369	1641	0	0	0
Miscellaneous	7174	5175	12349	16644	6485	23129	20105	4774	24879
Total Tonnes	96945	159424	**256369**	43707	305441	**349148**	217236	362822	**580058**

II. Off –shore Container Terminal Traffic handled during 2015-16, 2016-17 and 2017-18 (upto February 2018)

Cargo	2015-16			2016-17			2017-18 (Up to February)		
	Import	Export	Total	Export	Import	Total	Import	Export	Total
Automobile-tonnes (units)	8394 (1042)	153118 (104292)	161512 (105334)	24600 (2444)	279677 (192876)	304277 (195320)	21859 (1758)	301729 (198293)	323588 (200051)
Iron & Steel	81302	0	81302	2191	17910	20101	171981	22447	194428
Containers	75	1131	1206	272	1369	1641	0	0	0
Miscellaneous	7174	5175	12349	16644	6485	23129	18462	3996	22458
Total Tonnes	96945	159424	**256369**	43707	305441	**349148**	212302	328172	**540474**

10.3. Considering that there was difference in the traffic figures as furnished by ICTPL vis-à-vis, the traffic figures as indicated by MBPT for the years 2015-16 to 2017-18, the ICTPL was requested vide our letter dated 04 July 2018 to explain the reason for the variance and was also requested to confirm the actual traffic handled at OCT by ICTPL during the said years.

10.4. In this connection, the ICTPL vide its letter dated 10 July 2018 has stated that the MBPT has considered containers and packages (miscellaneous) in tonnes, whereas the ICTPL has considered vehicles and packages (miscellaneous) handled in units, containers in TEUs and steel cargo in tonnes. The ICTPL has also stated that there is a slight difference in the conversion factor considered by MBPT. The ICTPL has confirmed that the figures furnished by ICTPL is correct as per their records and that in this connection, the ICTPL has forwarded the vessel wise traffic handled by ICTPL during the years 2015-16 to 2017-18. The traffic details as given by ICTPL are as follows:

Cargo	2015-16			2016-17			2017-18		
	Import	Export	Total	Export	Import	Total	Import	Export	Total
Automobile - tonnes - units	 8394 1042	 153120 104292	 161514 105334	 24600 2444	 276729 191387	 301329 193831	 25305 1967	 335604 219116	 360909 221083
Packages - tonnes - units	 7083 1204	 5713 2135	 12796 3339	 18835 4086	 7351 3351	 26186 7437	 19950 3823	 4774 2844	 24724 6667
Iron & Steel	81302	0	81302	10545	16997	27542	166217	22447	188664
Containers	32	121	153	193	127	320	0	0	0

11. As stated earlier, a joint hearing on the case in reference was held on 20 April 2018 at the office of this Authority in Mumbai. At the joint hearing, MBPT and users/ user organisations have made their submissions.

12. As agreed at the joint hearing, the ICTPL was requested vide our letter dated 14 May 2018 to furnish further additional information/ clarification. The ICTPL vide its letter No. OPS/TOP/TAMP/L/1/18-19 dated 22 May 2018 has responded. The additional information/ clarification sought and reply furnished by ICTPL thereon is tabulated below:

Sl. No.	Information/ clarification sought by us	Reply furnished by ICTPL
1(a).	During the Joint Hearing, it was clarified by Mumbai Port Trust (MBPT), that it has accorded permission to handle Ro-Ro vessels and Steel Cargo vessels as an Interim arrangement. It was further understood that MBPT collects the charges from the users of the Cruise/ passenger vessels handled at OCT berth occasionally. However, the proposal of ICTPL dated 15 March 2018 seeks approval of rates for passenger in addition to the Ro-Ro, Steel, containers and any other clean cargo.	MBPT Board vide TR No. 26 dated 30th May 2015 has accorded approval to permit ICTPL for alternate use of the OCT for handling RO-RO vessels. Steel cargo vessels and Passenger vessels are accommodated at OCT with the prior permission from MBPT. The letter from MBPT dated January 6, 2018 is furnished, where in it clearly states that the charges will be collected by MBPT and proportionate berth hire charges will be remitted to ICTPL. As an interim arrangement ICTPL will be

1(b).	Since there is no clarity as regards which organization (MBPT / ICTPL) is collecting the charges from the users of Cruise/ passenger vessels, the ICTPL to furnish a note clarifying the tariff arrangement for Cruise/ passenger vessels and any other clean cargo handled at the OCT berth along with the cargo items falling under the category of clean cargo.	charging wharfage and berth hire charges on RORO, Steel vessels & Container vessels from the users. If any other clean cargo vessels are handled at ICTPL, the charges will be collected by MBPT and proportionate charges will be remitted to ICTPL as per mutually agreed revenue share.
2(a)	The ICTPL to refer paragraph no. 14 (v) (o) of the tariff order dated 9 April 2012 passed by the TAMP, wherein it has been recorded that the estimates for the year 2011-12 furnished by the ICTPL is subject to review with reference to the actuals and the financials/ cost position for the year 2009-10 to 2011-12, as considered in the order dated 9th April 2012 is required to be reviewed as per clause 2.13 of the Tariff Guidelines of 2005	The said tariff order was for operations at BPS, which was part of the License Agreement with MBPT for a license period of 5 years only from the date of License Agreement (i.e. 3rd December 2007). ICTPL's operations at BPS ceased since 2nd December 2012 i.e. upon completion 5 years period. The present proposal is for adhoc operations at OCT Berth (which commenced since June 2015). As such there may not any relevance of information of past estimates sought by you and its review. Nonetheless, for the good order sake, the actuals for the financial year 2011-12 & 2012-13 is furnished.
2(b)	Further, as noted from para 15.4 of the order dated 9th April 2012, the estimates for the year 2012-13 is subject to review following clause 2.13 of the Tariff Guidelines of 2005.	
2(c)	In view of the above, the ICTPL to furnish the actuals for the year 2011-12 and actuals for the year 2012-13 (upto the date of cessation of operation by ICTPL at BPS berths).	
3.	The ICTPL to furnish the draft Scale of Rates along with conditionalities governing the tariff for the cargo proposed to be handled at OCT, as per the approval accorded by the MBPT as an interim arrangement.	The draft Scale of Rates is furnished.

13.1. At the joint hearing, it was clarified by MBPT that it has accorded permission to handle Ro-Ro vessels and Steel Cargo vessels as an Interim arrangement. MBPT further clarified that MBPT collects the charges from the users of the Cruise/ passengers vessels handled at OCT berth occasionally based on the Guidelines issued by the Ministry of Shipping (MoS). However, the proposal of ICTPL dated 15 March 2018 seeks the approval of rates for passenger in addition to Ro-Ro, Steel, Containers and any other clean cargo.

13.2. Since there was no clarity as regards which organization (MBPT/ ICTIPL) is collecting charges from the users of Cruise/ passenger vessel, the MBPT was requested to furnish a note clarifying the tariff arrangement for Cruise/ passenger vessels handled at the OCT, vide our letter dated 14 May 2018.

13.3. The MBPT was also requested to furnish the copy of the relevant Guidelines issued by the MoS based on which MBPT collects the charges for handling the Cruise / passenger vessels at the OCT.

13.4. In this connection, the MPBT vide its letter No. TM/BDC/CRUISE/151/2018-19 dated 17 May 2018 has made the following submissions:

(i). Government of India issued a directive dated 03.11.2017 to charge a single composite rate of US $ 0.35 per GRT for stay upto 12 hours of Cruise ship in Major Ports. This single rate includes charges for all the four services provided to Cruise ship like (i) Port dues, (ii) Pilotage, (iii) Berth Hire Charges for 12 hours and (iv) Passenger levy. For stay beyond 12 hours, decision was left to individual Ports. This directive is effective for a period of 3 years. The Board of Trustees of Port of Mumbai have approved to levy this single rate for stay upto 12 hours for Cruise vessels in lieu of the rates in S.O.R. For beyond 12 hours, the charges as per MBPT's existing S.O.R i.e. US $ 0.00618 per

GRT per hour is approved. (Copy of the Government directive has been furnished by MBPT.)

(ii). Prior to 03 November 2017, the rates charged to Cruise vessels included separate charges as Port duties, Pilotage, Berth Hire charges and Passengers levy. Total charges applicable on a ship for 12 hours stay in Port prior to 03 November 2017 and post 03 November 207 have been compared. The analysis of total charges prior to 03 November 2017 shows that Berth hire charges constituted 12.34% of the total charges. The Cost Components of each of the above charges are as below:-

Port dues	-	29.06%
Pilotage	-	43.53%
Berth Hire Charges	-	12.34%
Passenger levy	-	15.07%
Total	**-**	**100.00**

(iii). The Berth Hire Charges for vessels berthing at OCT is payable to M/s. ICTPL and therefore, Berth Hire Charges need to be quantified in this composite single rate.

(iv). The 12.34% of the current tariff (Single rate of $ 0.35 per GRT works out to USD 0.04319 per GRT for stay upto 12 hours. For Vessels staying beyond 12 hours, Berth Hire charges will be levied as per existing S.O.R i.e. USD 0.00618/GRT/Hour.

(v). In view of above, for ease of doing business, the single composite rate and Berth Hire Charges (if stay beyond 12 hours) are charged and collected from the cruise vessels by MBPT and proportionate Berth Hire Charges are remitted to ICTPL.

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

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

(i). The Indira Container Terminal Private Limited (ICTPL) is a BOT Operator at Mumbai Port Trust (MBPT), whose tariff fixation is governed under the Tariff Guidelines of 2005. As per the provisions of the License Agreement (LA) dated 3 December 2007 entered into between ICTPL and MBPT, the ICTPL was to handle containers at Ballard Pier Station (BPS) container terminal and also construct an Off-shore Container Terminal (OCT) at MBPT for handling containers, in such a manner that the BPS project would be operated and managed by ICTPL for a period of 5 years commencing from the date of award of License or for a period of 2 years from the commissioning of OCT project, whichever is earlier.

The ICTPL ceased to operate at the BPS from 2 December 2012 as per the terms of the LA, but could not migrate its operations to the OCT, owing to non-completion of the construction phase of the OCT.

It has emerged during the tariff proceedings that the revival process to revive the project is in progress. In the meanwhile, the Board of Trustees of MBPT has permitted alternate use of the OCT by the ICTPL for handling car carriers, specific cargo vessels and passenger vessels till final decision is taken about the re-organisation of the OCT Project. Accordingly, the proposal of ICTPL is for prescription of rates for handling of RoRo vessels, steel cargo and containers at OCT on an adhoc basis with effect from 29 June 2015 (being the date when ICTPL has initially furnished the proposal to TAMP) till the time the project is revived or upto 31 March 2019, whichever is earlier.

(ii). The proposal of ICTPL dated 09 February 2018 and 15 March 2018 along with information/ clarification collected during the processing of this case has been considered in this analysis.

(iii). As stated earlier, the Board of Trustees of MBPT have permitted alternate use of the OCT by the ICTPL for handling car carriers. The alternate use of OCT for handling of Car carriers is with no strings attached. However, as per the Board Resolution, the alternate use of OCT for handling all types of cargo vessels and passenger vessels is subject to the Chairman of MBPT authorizing and permitting use of OCT for all types of cargo and passenger vessels only in highly exceptional circumstances when Port's berths are occupied. This Authority is mandated to frame Scale of Rates and Statement of conditions in exercise of the powers conferred under Section 48 of the Major Port Trusts Act, 1963, for persons authorized under section 42 (3) of the Major Port Trusts Act, 1963 for the services rendered under Section 48 (1) of the said Act. In terms of the License Agreement entered between MBPT and ICTPL to operate the OCT project, the ICTPL is required to render container handling services at the OCT for which tariff is required to be approved by this Authority. However, in view of the reasons brought out in the earlier part of this Order, the Board of Trustees of MBPT has given specific authorisation to ICTPL to handle car carriers. Further, the ICTPL is also authorised to handle all types of cargo and cruise vessels with the specific approval of Chairman of MBPT in exceptional circumstances when the MBPT's berths are occupied. Further, the MBPT during the proceedings of this case has recommended the proposal of ICTPL. The users at the joint hearing have also supported the proposal of ICTPL. Therefore, this Authority is inclined to consider the proposal of ICTPL to fix tariff for the above said cargo items, apart from vehicles. Incidentally, the LA already authorises the ICTPL to levy berth hire charges for OCT. While this Authority is required to fix charges for the cargo envisaged to be handled at OCT, to enable the ICTPL to levy the said charges whenever the said cargo is handled at OCT, it is upon the concerned authorities of MBPT to adhere to the stipulation put forth by its Board of Trustees regarding permission granted to ICTPL handling all types of cargo and passenger vessels at OCT.

(iv). The Scale of Rates for ICTPL for its operations at BPS was last fixed vide Order no. TAMP/41/2011-ICTPL dated 9 April 2012. Vide the said Order, the tariff was fixed for a period of one year i.e. 2012-13 (upto 2 December 2012, being the date of expiry of license for BPS project), by according an across the board increase of 25% over the then prevailing tariff of ICTPL.

(v). Clause 2.13 of the tariff guidelines of 2005 mandates this Authority to review the actual physical and financial performance of the Major Port Trusts and private terminal operating thereat the end of the prescribed tariff validity period with reference to the projections relied upon at the time of fixing the prevailing tariff.

In this regard, it is relevant here to mention that during the last fixation of tariff of ICTPL in April 2012, this Authority had relied upon the estimates for the year 2012-13. Also, it was indicated in the above referred Order that since the deficit position for the year 2011-12 is partially based on estimates, the actual position for the year 2011-12 shall be subject to review during the next tariff revision exercise. Thus, it is necessary to make a comparison of the estimates for the years 2011-12 and 2012-13 as relied upon in the April 2012 Order with that of the actuals for the said years.

The ICTPL is of the view that since the present exercise is for fixing tariff for the operations at OCT Berth on adhoc basis, the past period analysis need not be carried out. It has, however, made available the details to enable carry out such an exercise.

The 2005 Guidelines stipulates review of the actual physical and financial performance with reference to the projections relied upon, while determining the tariff for the future period. Thus, the exercise of comparison of the estimates for the years 2011-12 and 2012-13 as considered in the April 2012 Order with that of the actuals for the said years is to be carried out, even if the current exercise is to fix tariff on an adhoc basis for operations at OCT. Thus, for the said purpose, the estimates for the years 2011-12 and 2012-13 as contained in the tariff Order of April 2012 are taken into account.

Further, for the years 2013-14 and 2014-15, which are not covered by the April 2012 Order of ICTPL, the actual surplus/ deficit position may have to be analysed, so as to determine the overall past performance of ICTPL.

Thus, while undertaking the review of the past period estimates of ICTPL for the years 2011-12 to 2014-15, the surplus/ deficit arising for the period 2011-12 and 2012-13 and the surplus/ deficit arising for the period 2013-14 and 2014-15 may have to be treated differently, as explained in the subsequent part of the analysis. The analysis of the financial and physical performance of ICTPL for the years 2011-12 to 2014-15 is discussed in the subsequent paragraphs.

(vi). (a). ICTPL has reported to have actually handled container traffic of 30708 TEUs and 22758 TEUs during the years 2011-12 to 2012-13 respectively, as against the estimated container traffic of 30281 TEUs and 38097 TEUs during the corresponding years. Thus, as against the estimated aggregate cargo traffic of 68378 TEUs, the ICTPL has actually handled 53466 TEUs. The reduction in the actual container traffic handled in 2011-12 and 2012-13 vis-à-vis the estimates for the corresponding period works out to around 21.80%. In this connection, it is relevant here to mention that the MBPT in an earlier occasion had indicated the traffic of ICTPL at ‘containers 25606 TEUs’ and ‘containers 20431 TEUs’ for the years 2011-12 and 2012-13 respectively. It is not clear from the MBPT communication whether the figures indicated by MBPT reflects the traffic based on the number of containers or on TEUs. Assuming that the traffic figures indicated by MBPT is based on the number of containers handled and applying the conversion factor of ‘1 container at 1.2 TEUs’, the traffic figures indicated by MBPT is seen to be closer to the traffic figures as furnished by ICTPL.

(b). Considering that the ICTPL has ceased to operate at the BPS in December 2012 as per the provisions of the LA, it has not handled any containers during the years 2013-14 and 2014-15. This position has been confirmed by MBPT in one of its earlier correspondences.

(vii). For the years 2011-12 to 2014-15, the ICTPL has considered the Income as reflected in the Annual Accounts for the corresponding years except that income under some heads in the annual accounts viz., Interest on Margin money deposit, Interest on Bank deposit, Interest on Tax refund, Provision for doubtful debts written back, Balances no longer payable written back and Provision for Gratuity written back, have not been considered in the Cost statement. This position has been considered in the analysis.

(viii). (a). For the years 2011-12 to 2014-15, the ICTPL has considered the Expenditure as reflected in the Annual Accounts for the corresponding years except that expenditure under some heads in the annual accounts viz., Revenue share to MBPT, Penalty on shortfall of Minimum Guaranteed Throughput (MGT), Provision on doubtful advances and Interest cost have not been considered in the Cost statement. This position has been considered in the analysis. The expenses have been considered under the head of ‘operating expenses’ and ‘overheads’ in the Cost statement.

(b). In addition to the expenses as reflected in the Annual Accounts, based on the approach followed during the fixation of tariff of ICTPL in the past, an amortization of the share issue expenses to the tune of ₹.0.89 lakhs (being the share issue expenses amounting to ₹.25.90 lakhs amortized in equal annual instalments over 29 years commencing from 2009-10), has been considered in our analysis for the years 2011-12 to 2014-15.

(c). The depreciation for the year 2011-12 to 2014-15 is considered as reflected in the audited annual accounts of ICTPL for the respective years.

(ix). (a). For the years 2011-12 to 2014-15, the closing net block of assets as reflected in the Annual Accounts has been taken into account.

(b). It is noteworthy that Upfront fees towards O & M rights to the tune of ₹.25 crores reflected as 'Intangible Asset' in the Annual Accounts has not been taken into account in the net block of assets, as per the approach adopted in the last fixation of tariff of ICTPL, considering that the Annual Accounts of ICTPL state that the said amount shall be amortised after the commercial operation date of the OCT project.

(c). Further, in addition to the net block of assets, unamortized portion of share issue expenses is considered as a part of the capital employed, in line with the approach adopted during the fixation of tariff of ICTPL in the past.

(d). The working capital for the years 2011-12 to 2014-15 are discussed below:

(i). As per 2005 Guidelines, two months' estate income and two months' terminal charges payable by Indian Railways are the limit for allowable sundry debtors. The estate income and terminal charges payable to Indian Railways are not relevant in the case of private terminal operators like ICTPL and hence not considered.

(ii). However, outflow on certain items arising from contractual obligations of LA are treated as a part of sundry debtors. Incase of ICTPL, as per LA, one year lease rent is payable by the ICTPL to the MBPT in advance. Considering this position, six months' lease rent based on the annual lease rent for the relevant years has been considered under 'sundry debtors' incase of ICTPL in the past.

However, as reported by the ICTPL, the ICTPL and the MBPT are under dispute with regard to the lease rentals payable by ICTPL to MBPT and hence, the lease rentals has been reflected as Contingent Liability by ICTPL in its Annual Accounts. In view of this provision, no sundry debtors have been considered for any of the years under consideration.

(iii). As per norms, limit on inventory for capital spares prescribed in the tariff guidelines is one year's average consumption and the limit on other items of inventory is six months' average consumption of stores excluding fuel. The details of value of inventory consumed by ICTPL during the relevant years are not available in the Annual Accounts. In the absence of details, the value of inventory is taken as 'nil' in the working capital for all the relevant years under consideration.

(iv). The limit on cash balance prescribed in the tariff guidelines is one month's cash expenses. The cash balance is considered based on one month's operating expenses and overheads, for all the years under consideration.

(v). The tariff guidelines of 2005 do not stipulate any norms for current liabilities. For the years 2015-16 and 2016-17, the ICTPL has indicated the amount of 'Trade payables' as current liabilities for the relevant years. Considering that no sundry debtors have been considered in the analysis for any of the years under consideration, the current liabilities are not taken into account for any of the years under consideration.

(e). Based on the value of net fixed assets, working capital and component of unamortized portion of share issue expenses, the Capital Employed has been assessed for all the years under consideration.

(x). In the last tariff Order of April 2012, Return on capital employed was allowed at 16% for the years 2011-12 and 2012-13 without linking it to the capacity utilization, in view of clause 2.9.11 of the 2005 tariff guidelines, which stipulates that investment made in accordance with the obligation under Concession Agreement will be considered for ROCE even if full capacity utilization is not achieved. In view of the above position, Return on capital employed is allowed at 16% for all the years under consideration even though the ICTPL has not handled any traffic during the years 2013-14 and 2014-15.

(xi). (a). A statement showing the analysis of the performance of ICTPL for the years 2011-12 to 2014-15 is attached as **Annex - I**.

(b). A summary of the comparison of the actuals for the years 2011-12 and 2012-13 vis-à-vis the estimates considered in the last tariff Order is tabulated below:

(₹ In Lakhs)

Particulars	Aggregate of the Estimates relied upon in the last Order for the years 2011-12 & 2012-13	Aggregate of Actuals for the years 2011-12 & 2012-13	% Variation
Traffic (in MTs)	68378	53466	**-21.81%**
Op. Income	1411.05 *****	1109.09	**-21.40%**
Total Exps (incl. Depn)	1812.19	1728.52	**-4.62%**

***** The operating income estimates are adjusted to reflect the 25% increase granted vide the April 2012 Order.

(c). The details regarding the Actual Return earned by ICTPL on the Capital Employed are given in the following table:

(₹ In Lakhs)

Sr. no.	Particulars	2011-12	2012-13	Average
(i).	Actual Surplus before Return earned by ICTPL	(373.40)	(272.43)	-322.92
(ii).	Actual Capital Employed	995.74	406.21	700.98
(iii).	Actual Return on Capital Employed as a percentage.	-37.50%	-67.07%	-52.28%
(iv).	Variation in Return on Capital Employed @ 16%	-334.37%	-519.16%	-426.77%

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

It may be recalled that based on the Ministry of Shipping (MOS) letter No. 14019/20/2009-PG dated 12 June 2015, the ICTPL was, *inter alia*, communicated vide our letter no. TAMP/46/2015-Misc dated 24 July 2015 that this Authority would henceforth take into account both the financial and physical parameters, for the purpose of clause 2.13 of the Tariff Guidelines of 2005.

As can be seen from the above tables, the variation between the actual and estimated traffic is 21.81% and the variation between the actual and estimated financial parameters is -426.77%. Since both the financial and physical parameters are more than +/- 20%, in terms of the stipulation contained in Clause 2.13 of the 2005 Guidelines, there is a case to set off 50% of the past deficit of ICTPL pertaining to the years 2011-12 and 2012-13, in the current exercise of tariff fixation, as per MOS letter, as given below:

Particulars	**₹ in Lakhs**
Total deficit 2011-12 and 2012-13	-870.14
20% to be met by ICTPL	-174.03
Balance deficit	-696.11
50% to be considered for set off	**-348.06**

(e). The deficit for the years 2013-14 and 2014-15 would not be governed by the stipulation contained in Clause 2.13 of the 2005 Guidelines, since no estimates are available for comparison of the actuals for the said period. In view of the above position, the entire deficit for the years 2013-14 and 2014-15 to the tune of ₹.209.77 lakhs is also considered for set off, in the current exercise of tariff fixation.

(xi). Considering that the proposal of ICTPL is for seeking approval for handling of vehicles, steel cargo and containers at OCT on an adhoc basis with effect from 29 June 2015 till 31 March 2019, it is appropriate to analyse the actual performance of ICTPL during the years 2015-16 to 2017-18 and the estimates for the year 2018-19.

The actuals furnished by ICTPL for the years 2015-16 and 2016-17 has been analysed with reference to the audited accounts of the respective years as furnished by ICTPL, as discussed in the subsequent paragraphs. With regard to the year 2017-18, the figures are partly based on actuals and partly based on estimates. Further, the annual accounts for the year 2017-18 was not available at the time of analyzing the case in reference. Therefore, the estimates pertaining to the year 2017-18 as relied upon now, would be reviewed based on the audited Accounts for the year 2017-18, during the next review of tariff of ICTPL.

With regard to the year 2018-19, the ICTPL has expressed its inability to provide any financial/ traffic projections for the year 2018-19. In view of this position, the estimates for the year 2018-19 have been built up by taking the estimates for the year 2017-18 as base as discussed in the subsequent paragraphs.

(xii). (a). As brought out earlier, based on the specific approval accorded by the MBPT, the ICTPL has furnished details to show that it has been handling automobiles, steel cargo and containers since 20 July 2015. A comparative position of the year wise details of the actual traffic handled by ICTPL as furnished by it and the traffic details as furnished by MBPT is given below:

Particulars	**2015-16**		**2016-17**		**2017-18**		**Total**	
	ICTPL	**MBPT**	**ICTPL**	**MBPT**	**ICTPL**	**MBPT**	**ICTPL**	**MBPT**
Automobiles (units)	105334	105334	193831	195320	221083	221083	520248	521737
Containers (TEUs) (tonnes)	153 Not given	Not given 1206	320 Not given	Not given 1641	0 0	0 0	473 Not given	Not given 2847
Iron & Steel (tonnes)	81302	81302	27542	20101	188664	194428	297508	295831
Packages (tonnes)	12796	12349	26186	23129	24724	22458	63706	57936

As seen above, there is a difference in the traffic figures furnished by ICTPL and MBPT. When this difference was brought to the notice of ICTPL, the ICTPL has given a detailed statement indicating the vessel wise traffic handled by ICTPL during the years 2015-16 to 2017-18 and has confirmed that the figures furnished by ICTPL is correct as per their records. Based on the confirmation furnished by the ICTPL, and keeping in view that the difference is not substantial, the traffic figures as furnished by ICTPL for the years 2015-16 to 2017-18 is relied upon.

(b). In respect of the year 2018-19, the ICTPL has not estimated any traffic inspite of a specific request in this regard. However, if the tariff is to be fixed for the year 2018-19 as requested by ICTPL, it is essential to have the estimates of traffic for 2018-19. In this connection, the appropriate approach would be to take into account the past trend of traffic to determine the future traffic. However, incase of ICTPL, the trend in traffic of automobiles, steel cargo and packages is seen to be erratic, in the past. Moreover, the other cargo to be handled at ICTPL is not definite as it would depend upon the occupancy of the MBPT berths. In view of this position, the traffic of vehicles, steel cargo for the year 2018-19 has been considered by assuming a modest 10% growth over the estimated/ actual traffic of vehicles and steel cargo pertaining to the year 2017-18. Since no containers have been handled/ estimated to be handled during the year 2017-18 and the containers handled in the past is insignificant, no containers have been estimated to be handled during the year 2018-19 also.

(xiii). (a). For the years 2015-16 and 2016-17, the income as given in the audited annual accounts of ICTPL have been relied upon. While doing so, income under some heads in the annual accounts viz., Interest on Margin money deposit, Interest on Bank deposit and Balances no longer payable written back, have been excluded from the Cost statement.

(b). Further, from the Annual Accounts of ICTPL from the year 2015-16 onwards, the revenue share paid by ICTPL to MBPT is indicated as an appropriation of the income, instead of the earlier practice of indicating the revenue share as an item of operating cost. Thus, with regard to the income for the years 2015-16 and 2016-17, the revenue share paid by ICTPL to MBPT to the tune of ₹ 2246.06 lakhs and ₹ 4409.24 lakhs respectively, has been reflected as an appropriation of income in the Annual Accounts. As per clause 2.8.1 of the tariff guidelines of 2005, revenue share payable by ICTPL to MBPT will not be allowed as an admissible cost for tariff computation. This position has also been clearly spelt out in Article 10.1 of the LA entered into by ICTPL with MBPT. Thus, the revenue share paid by ICTPL to MBPT during the years 2015-16 and 2016-17 is added back to the operating income of the respective years.

(c). The Annual Accounts for the years 2015-16 and 2016-17 also reflect income and expenses towards 'Construction', which has not been included as part of income and expenses by the ICTPL in its Cost statement. In this regard, the ICTPL has stated that in accordance with the principles in Appendix A to Indian Accounting Standards (AS) 11 relating to accounting for Service Concession Agreements, the Company is required to recognize Construction Revenue in its Statement of Profit & Loss with a Margin on the construction cost incurred by the company which is estimated at 1% on construction cost. This is reported to be a notional Income and just an Accounting Adjustment and the said revenue is reported to be not realizable from any Customer or User. Based on the explanation furnished by the ICTPL, the revenue as well as the expenditure pertaining to 'construction' has been excluded from the cost statement.

(d). With regard to the year 2017-18, inspite of a specific request, the ICTPL has not furnished the workings in support of the income for the year 2017-18. Given that the wharfage rate in respect of automobiles in the Scale of Rates of MBPT which has been adopted by ICTPL is prescribed on an advalorem basis, it is not found possible to estimate the income with the available data of number of vehicles. However, considering that the traffic as furnished by ICTPL has been relied upon, the operating income as furnished by ICTPL for the year 2017-18 is also relied upon.

(e). In respect of the year 2018-19, given that a 10% increase in traffic has been considered over the traffic for the year 2017-18, the income in respect of the year 2018-19 is also considered with a 10% increase over the income estimates for the year 2017-18.

(xiv). (a). As stated earlier, in the Annual Accounts of ICTPL for the years 2015-16 and 2016-17, the revenue share paid by ICTPL to MBPT is indicated as an appropriation of the income, instead of the earlier practice of indicating the revenue share as an item of operating cost. Thus, as already stated earlier, revenue share paid by ICTPL to MBPT during the years 2015-16 and 2016-17 has not been considered in the analysis. The Interest cost as reflected in the Annual Accounts have also not been considered in the Cost statement.

(b). The breakup of the operating expenses is not made available for the year 2017-18 by ICTPL. In the absence of details, the total actual operating expenses of ICTPL for the year 2016-17 was taken as base and escalated by 2% and adjusted for the traffic variation, to determine the overall operating cost for the year 2017-18. Since this amount was seen to be higher than the estimates furnished by ICTPL, the estimates as furnished by ICTPL for the year 2017-18 is relied upon.

(c). Likewise, the total estimated operating expenses of ICTPL for the year 2017-18 is taken as base and escalated by 3.45% and adjusted for the traffic variation, to determine the overall operating cost for the year 2018-19.

(d). Further, as brought out earlier, an amortization of the share issue expenses to the tune of ₹ 0.89 lakhs per annum has been considered in our analysis for the years 2015-16 to 2018-19.

(e). The actual finance & miscellaneous expenses for the year 2016-17 is considered as the estimates of finance & miscellaneous expenses for the years 2017-18 and 2018-19.

(xv). (a). Clause 2.7.1 of the tariff guidelines stipulates that incase of private terminals, depreciation has to be allowed on straight line method with life norms adopted as per the Companies Act, 1956 or based on the life norms prescribed in the Concession Agreement whichever is higher. The ICTPL has not furnished separate workings in respect of calculation of depreciation. The Annual Accounts of ICTPL for the years 2015-16 and 2016-17 confirm that the depreciation has been calculated as per the provisions of the Companies Act, 2013. The depreciation for the year 2015-16 is considered as reflected in the audited annual accounts of ICTPL for the said year.

(b). During the year 2016-17, as seen from the audited annual accounts of ICTPL, the ICTPL is seen to have capitalized an expenditure to the tune of ₹ 735.60 crores as an intangible asset viz. Software and Port Rights and is also seen to have considered the amortization of the said capital expenditure. This is reported to be the right to operate the berth facility for a fee, considering the fact that the project could not be commissioned as per the original plan and is reported to have commenced during the year 2016-17 after the cessation and capitalization of interest during the construction period. Considering that the amount is reflected in the audited annual accounts for the year 2016-17, the depreciation amount as reflected in the audited annual accounts is relied upon.

(c). For the year 2017-18, the depreciation as estimated by ICTPL is relied upon. In the absence of any details furnished by ICTPL for the year 2018-19, the depreciation for the year 2017-18 is considered as the depreciation for the year 2018-19 also.

(xvi). (a). For the years 2015-16 and 2016-17, the closing net block of assets as reflected in the Annual Accounts has been taken into account. For the years 2017-18 and 2018-19, the closing net block of assets after adjustment of annual depreciation has been taken into account.

(b). As brought out earlier, the Upfront fees towards O & M rights to the tune of ₹ 25 crores reflected as 'Intangible Asset' in the Annual Accounts has not been taken into account in the net block of assets, as per the approach adopted in the last fixation of tariff of ICTPL.

(c). Further, as brought out earlier, unamortized portion of share issue expenses has been considered as part of the capital employed, in line with the approach adopted during the fixation of tariff of ICTPL in the past.

(d). The working capital for the years 2015-16 to 2018-19 are discussed below:

(i). For the reasons as brought out earlier, no sundry debtors with regard to lease rentals (contractual obligations of LA are treated as a part of sundry debtors) have been considered for any of the years under consideration.

(ii). For the reasons as brought out earlier, in the absence of details of value of inventory consumed by ICTPL during the relevant years are not available, the value of inventory is taken as 'nil' in the working capital for all the relevant years under consideration.

(iii). The cash balance is considered based on one month's operating expenses and overheads, for all the years under consideration.

(iv). The tariff guidelines of 2005 do not stipulate any norms for current liabilities. For the years 2015-16 and 2016-17, the ICTPL has indicated the amount of 'Trade payables' as current liabilities for the relevant years. Considering that no sundry debtors have been considered in the analysis for any of the years under consideration, the current liabilities are not taken into account for any of the years under consideration.

(e). Based on the value of net fixed assets, working capital and component of unamortized portion of share issue expenses, the Capital Employed has been assessed for all the years under consideration.

(xvii). Return on capital employed is allowed at 16% for all the years under consideration.

(xviii). (a). Subject to the discussions above, the cost statement has been modified. Further, as brought out earlier, the impact of past deficit to the tune of ₹.348.06 lakhs pertaining to the years 2011-12 & 2012-13 and the deficit of ₹.209.77 lakhs pertaining to the years 2013-14 & 2014-15 has to be factored in the financial position for the years 2015-16 to 2018-19. The modified cost statement is attached as **Annex – II**. The results disclosed by cost statement at the existing level of tariff at ICTPL are summarized as shown in the table given here in under:

Operating Income					Net Surplus(+)/ Deficit(-)					Net Surplus(+)/ Deficit(-) as a % of operating Income				Average Surplus/ (Deficit) %
(₹ in crores)					(₹ in crores)									
2015-16	2016-17	2017-18	2018-19	Total	2015-16	2016-17	2017-18	2018-19	Total	2015-16	2016-17	2017-18	2018-19	
40.84	80.17	98.59	108.45	328.05	35.10	-66.65	-55.22	-40.21	-126.99	85.94%	-83.14%	-56.01%	-37.08%	-22.57%

(b). As can be seen from the above table, the ICTPL has been/ would be in deficit to the tune of around ₹126.99 crores during the years 2015-16 to 2018-19. The deficit has been arrived at the existing level of tariff of ICTPL. Thus, even based on the levy of wharfage rates as prescribed for MBPT and levy of berth hire charges at 1.3 times of the MBPT tariff, the ICTPL is in a deficit position. In other words, levy of wharfage rates as prescribed for MBPT and levy of berth hire charges at 1.3 times of the MBPT tariff, would not put ICTPL at an undue advantageous position, as it has not earned any ROCE.

(c). Considering the deficit position of ICTPL for the years 2015-16 to 2018-19 as discussed above and given that the Board of Trustees have accorded approval of the tariff arrangement of ICTPL and since the users have also expressed their support to the tariff rates being levied by ICTPL, this Authority is inclined to approve the levy of wharfage rates as prescribed for MBPT and levy of berth hire charges at 1.3 times of the MBPT tariff, as proposed by ICTPL on an adhoc basis.

(d). The ICTPL has sought retrospective approval of the rate from 29 June 2015. Considering that the 1st vessel was handled at OCT on 20 July 2015, (as seen from the details furnished by ICTPL), it is felt appropriate to give retrospective approval to the rate from 20 July 2015 till the time the project is revived by the Government or otherwise or upto 31 March 2019, whichever is earlier.

(xix). (a). The ICTPL has defined the terms viz., Barge, Coastal Vessel, Day, Dollar, Foreign going Vessel, Free period, Full Container Load, GRT, Less than Container Load, Month, Over dimensional Container, Reefer Container, RO/ RO Vessel, Shut Out Container, Transhipment Cargo, Vessel, Vessel Completion Date and Wharfage, in its Scale of Rates. The definitions proposed to the above terms is seen to be in line with the definitions prescribed in respect of these terms in the existing Scale of Rates of MBPT and in other Major Port Trusts and hence, is approved.

(b). The ICTPL has also defined the term ‘License Agreement’ in its Scale of Rates to mean an agreement signed between The Board of Trustees of The Port Of Mumbai (Licensor/ MBPT/ client), a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at Port House, Ballard Estate, Mumbai – 400 001 and INDIRA CONTAINER TERMINAL PRIVATE LTD (Licensee/ ICTPL/ the Company), a Company registered under the Companies Act, 1956, and having its registered office at Indira Dock, Near Green Gate, Mumbai Port, Mumbai – 400 038. The proposed note is not seen to be a definition governing the levy of tariff. Hence, the same is not approved.

(c). The term ‘OCT’ has been defined to mean Off-shore Container Terminal of ICTPL at Mumbai port premises, which is also approved.

(xx). (a) Some general notes governing the levy of the charges viz., conditionalities governing classification of vessels into foreign and coastal, levy of interest on delayed payments/ refunds, conditionalities governing the flexibility provided to the terminal operator to levy charges lower than ceiling rates/ rationalize the conditionalities, conditionalities governing levy of adhoc rates in the event tariff for a service/ cargo is not available, rounding off bills,conditionalities governing levy of concessional rates on coastal vessel/ cargo/ container (other than thermal coal, POL, iron ore and iron ore pellets), non-levy of charges for delay beyond a reasonable level attributable to the ICTPL, which are found to be in line with the general conditionalities prescribed in the Scale of Rates of MBPT and other major port trusts and hence, is approved.

(b) The rate of interest on delayed payments/refunds has been updated based on the prevailing Prime Lending Rate of SBI.

(xxi). The conditionalities governing levy of berth hire charges, wharfage charges and container related charges as proposed by ICTPL are seen to be in line with similar notes prescribed in the existing Scale of Rates of MBPT and hence, is approved.

16.1. In the result, and for the reasons given above, and based on a collective application of mind, this Authority accords approval for the Scale of Rates of ICTPL, which is attached as **Annex - III**.

16.2. The adhoc Scale of Rates and conditionalities in respect of ICTPL shall be deemed to have come into effect retrospectively from 20 July 2015 and shall be in force till the time the project is revived or upto 31 March 2019, or otherwise, whichever is earlier. The approval accorded shall automatically lapse thereafter unless specifically extended by this Authority.

16.3. The ICTPL shall furnish its Annual Accounts and performance report within 60 days of closing of the respective accounting year furnish to this Authority through MBPT. If ICTPL fails to provide such information within the stipulated time limit, the MBPT shall initiate appropriate action against ICTPL.

16.4. The tariff of the ICTPL has been fixed relying on the information furnished by the operator and based on various assumptions made as explained in the analysis. If this Authority at any time during the prescribed tariff validity period, finds that the actual position varies substantially from the estimation considered or there is deviation from the assumptions accepted herein, it shall directly require the ICTPL to file a proposal ahead of the schedule to review its tariff and to set off fully the advantage accrued on account of such variations in the revised tariff.

16.5. In this regard, the ICTPL is requested to furnish a report of the actual physical and financial performance within 15 days of completion of each quarter of a year in the same format in which the cost statement for the tariff proposals are filed. The report should also be accompanied with the reasons for variation from the estimates relied upon for fixing the tariff in force. If a variation of (+) / (-) 20% is observed between the actual and the estimates for two consecutive quarterly period, this Authority will call upon the concerned operator to submit their proposal for an ahead of scheduled review. If the ICTPL fails to file a tariff proposal within the time limit to be stipulated by this Authority, this Authority will proceed *suo motu* to review the tariff.

(T.S. Balasubramanian)
Member (Finance)

Annex III

INDIRA CONTAINER TERMINAL PRIVATE LTD
SCALE OF RATES

CHAPTER – I

1.1 DEFINITIONS

In this Scale of Rates, unless the context otherwise requires, the following definitions shall apply:

(i). 'ICTPL' shall mean Indira Container Terminal Private Ltd.

(ii). 'OCT' shall mean Offshore Container Terminal of ICTPL at the Mumbai Port premises.

(iii). 'Barge' is flat bottomed vessel whether self-propelled or not.

(iv). 'Coastal Vessel' shall mean any vessel exclusively employed in trading between any port or place in India to any other port or place in India having valid coastal licence issued by the Director General of Shipping/ Competent Authority.

(v). "Day" means a calendar day i.e. the period from the midnight of a day to the midnight of the following day.

(vi). 'Dollar' means US $.

(vii). 'Demurrage' shall mean charges payable for storage of cargo/ container within port premises beyond free period, as specified in the scale of rates.

(viii). 'Foreign-going Vessel' shall mean any vessel other than Coastal vessel.

(ix). 'Free period' shall mean the period during which cargo/ container shall be allowed storage free of demurrage charges and this period shall exclude Sunday(s), customs holidays and the terminal's Non-working days.

(x). 'Full Container Load' (FCL) shall mean a container containing cargo belonging to one consignee in the vessel's manifest.

(xi). 'GRT' means Gross Registered Tonnage of vessel as per the Ship's Registry or the International Tonnage Certificate issued by the competent authorities or a declaration from Defence Authorities in respect of war ships/ Naval ships.

(xii). 'Less than a Container Load' (LCL) shall mean a container containing cargo belonging to more than one consignee in the vessel's manifest.

(xiii). 'Month' shall be reckoned as 1st day (inclusive) of one month to the 1st day (exclusive) of the next month or from the 2nd day (inclusive) of one month to the 2nd day (exclusive) of the next month and so on. E.g. 14th of January (inclusive) to 14th of February (exclusive).

(xiv). 'Over dimensional container' shall mean a container carrying over dimensional cargo beyond the normal size of standard containers and needing special devices like slings, shackles, lifting beam etc. They also include damaged containers and other types which require special devices.

(xv). 'Reefer Container' shall mean a refrigerated container used for carriage of perishable goods with provision for electrical supply to maintain the desired temperature.

(xvi). ‘RO/ RO Vessel’ is the shortening of the term ‘Roll On/ Roll Off’. A method of ocean cargo service using a vessel wit ramps which allows wheeled vehicles to be loaded and discharged without cranes. Also refers to any specialised vessels designed to carry Ro/ Ro cargo.

(xvii). ‘Shut out Container’ shall mean a container which enters into the port as an export intake for a particular vessel (as indicated by the Vessel Identification Advice Number i.e. VIA No.) and is not connected to the particular vessel for reasons whatsoever.

(xviii). ‘Transhipment cargo’ shall mean any cargo not originally manifested for the port of Mumbai, but landed at Mumbai and subsequently reshipped to other ports / removed to other Ports by same or any other vessel. Transhipment of cargo is applicable to import oriented cycle only and not for export oriented cycle.

(xix). ‘Vessel’ includes anything made for the conveyance mainly by water of human being or of goods and a caisson.

(xx). Vessel Completion Date (VCD)

- For vessel in the Docks - the date on which import operations of the vessel are fully completed.

(xxi). ‘Wharfage’ shall mean the basic due recoverable on all cargo/ container imported or exported or transhipped or passing through the port, whether porteraged by the port or not.

1.2. General Terms and Conditions

(i). The status of the vessel, as borne out by its certification by the Customs or the Director General of Shipping, shall be the deciding factor for its classification as ‘coastal’ or ‘foreign-going’ for the purpose of levying vessel related charges; and, the nature of cargo or its origin will not be of any relevance for this purpose.

(ii)(I). (A).System of classification of vessel for levy of Vessel Related Charges (VRC)

(i). A foreign going vessel of Indian Flag having a General Trading Licence can convert to Coastal run on the basis of a Customs Conversion Order. Such vessel that converts into coastal run based on the Customs Conversion Order at her first port of call in Indian Port, no further custom conversion is required, so long as it moves on the Indian Coast.

(ii). A foreign going vessel of foreign flag can convert to coastal run on the basis of a Licence for Specified period or voyage issued by the Director General of Shipping and a custom conversion order.

(B). Criteria for levy of Vessel Related Charges (VRC) at Concessional Coastal rate and foreign rate.

(i). In cases of such conversion, coastal rates shall be chargeable by the load port from the time the vessel starts loading coastal goods.

(ii). In cases of such conversion coastal rates shall be chargeable till the vessel completes discharging operations at the last call of Indian Port; immediately thereafter, foreign-going rates shall be chargeable by the discharge ports.

(iii). For dedicated Indian coastal vessels having a Coastal Licence from the Director General of Shipping, no other document will be required to be entitled to coastal rates.

(ii)(II). Criteria for levy of Cargo Related Charges (CRC) at Concessional Coastal Rate (i). Foreign going Indian vessel having General Trading License issued for 'worldwide and coastal' operation should be accorded applicable coastal rates with respect to Handling Charges (HC) i.e. ship to shore transfer and transfer from/ to quay to/ from storage yard including wharfage in the following scenario:

a) Converted to coastal run and carrying coastal cargo from any Indian Port and destined for any other Indian port.

b) Not converted* to costal run but carrying coastal cargo from any Indian Port and destined for any other Indian Port.
*The Central Board of Excise and Customs Circular no.15/2002-Cus. dated 25 February 2002 allows carriage of coastal cargo from one Indian Port to another port in India, in Indian flag foreign going vessels without any custom conversion.

(ii) In case of a Foreign flag vessel converted to coastal run on the basis of a License for Specified period or voyage issued by the Director General of Shipping, and a Custom Conversion Order, the coastal cargo/ container loaded from any Indian Port and destined for any other Indian Port should be levied at the rate applicable for coastal cargo/container.

(iii). (a). All dollar denominated tariff will be recovered in Indian Rupees after conversion of charges in dollar terms into its equivalent Indian Rupees at the market buying rate notified by the Reserve Bank of India, State Bank of India or its associates or any other Public Sector banks as may be specified from time to time.

(b). The day of berthing of the vessel shall be reckoned as the day for such conversion.

(c). A regular review of exchange rate shall be made once in 30 days from the date of arrival in the cases of vessels staying in the port for longer period. The basis of billing shall change prospectively with reference to the appropriate exchange rate prevailing at the time of review.

(iv). Users will not be required to pay charges for delays beyond a reasonable level attributable to the port.

(v). Interest on delayed payments / refunds:

(a). The user shall pay penal interest on delayed payments at the rate of 15.70% per annum.

(b). The delay in payments by user will be counted beyond 10 days after the date of raising the bills. This provision will not apply to the case where payment is to be made before availing of the services / use of port properties as stipulated in the MPT Act, 1963 and / or prescribed as a condition in the tariff.

(c). The delay in refunds by the port will be counted beyond 20 days from the date of completion of services or on production of all the documents required from the user, whichever is later.

(vi). (a). The rates prescribed in the Scale of Rates are ceiling levels; likewise, rebates and discounts are floor levels. The port may, if it so desires, charge lower rates and/or allow higher rebates and discounts.

(b). The ICTPL may , if it so desires, rationalise the prescribed conditionalities governing the application of rates prescribed in the Scale of Rates if such rationalisation gives relief to the user in rate per unit and the unit rates prescribed in the Scale of Rates do not exceed the ceiling level.

(c) The ICTPL should notify the public such lower rates and/or rationalisation of the conditionalities governing the application of such rates and continue to notify the public any further changes in such lower rates and/ or in the conditionalities governing the application of such rates provided the new rates fixed shall not exceed the rates notified by the TAMP.

(vii) (a). Wherever a specific tariff for a service/ cargo is not available in the notified Scale of Rates, the ICTPL can submit a suitable proposal to the TAMP.

(b). Simultaneously, with the submission of proposal, the proposed rate can be levied on an ad hoc basis till the rate is finally notified.

(c). The ad hoc rate to be operated in the interim period must be derived based on existing notified tariffs for comparable services/ cargo; and, it must be mutually agreed upon by the Port and the concerned user(s).

(d). The final rate fixed by the TAMP will ordinarily be effective only prospectively. The interim rate adopted in an ad hoc manner will be recognised as such unless it is found to be excessive requiring some moderation retrospectively.

(viii). The minimum charges recovered in any bill shall be Rupees one hundred (₹ 100/-) only.

(ix). All charges worked out shall be rounded off to the next higher rupee on the grand total of each bill.

(x). In calculating the gross weight or measurement by volume or capacity of any individual item, fractions upto 0.5 shall be taken as 0.5 unit and fractions of 0.5 and above shall be treated as one unit, except where otherwise specified.

(xi) (a). The vessel related charges for coastal ships will be 60% of the charges levied for other vessels.

(b). The cargo/ container related charges for coastal cargo/ containers, other than thermal coal and POL including crude oil iron ore and iron ore pellets will be 60% of the normal cargo/container related charges.

(c). In case of cargo related charges, the concessional rates shall be levied on all the relevant handling charges for ship-shore transfer and transfer from/to quay to/from storage yard including wharfage.

(d). In case of container related charges the concession is applicable on composite box rate. Where itemized charges are levied, the concession shall be on all the relevant charges for ship-shore transfer and transfer from/to quay to/from storage yard as well as wharfage on cargo and containers.

(e). The charges for coastal cargo/containers/vessels will be denominated and collected in Indian Rupees (₹.).

(xii) (a). Vessel related charges for coastal vessel shall not exceed 60% of the corresponding charges for other foreign going vessels. Further, these charges will be collected in Indian Rupees only.

(b). As regards the Container related charges which are denominated in US dollars for the foreign containers, the tariff for coastal container shall not exceed 60%

of the corresponding charges for other foreign containers. Further, these charges will be collected in Indian Rupees only.”

CHAPTER – II

VESSEL RELATED CHARGES

2.1. BERTH HIRE CHARGES

<table>
<tr><th rowspan="2">Sl. No.</th><th rowspan="2">Vessels berthed at</th><th colspan="2">Rate per GRT for per hour or part thereof</th></tr>
<tr><th>Foreign-going vessel (in US $)</th><th>Coastal Vessel (in ₹)</th></tr>
<tr><td>1.</td><td>Offshore Container Terminal</td><td colspan="2">The berth hire charges would be levied at 1.3 times of the MBPT berth hire charges as applicable from time to time.</td></tr>
</table>

Notes:

1. For the purpose of levy of the above charges

   (i). The minimum GRT for any vessel except off shore supply vessels will be taken as 1000 and

   (ii) The term ‘vessel’ will include the boats, barges and craft of GRT of 1000 and above.

   (iii). Coastal vessels shall include vessels of Coast Guard / Indian Navy.

2. (i). The berth hire shall be leviable from the time a vessel takes the berth till the time it leaves the berth.

   (ii). There shall be a time limit beyond which berth hire shall not apply, berth hire shall stop 4 hours after the time of vessel signaling its readiness to sail.

   (iii). There shall be a ‘penal berth hire’ equal to one day’s berth hire charges for a false signal.

   (iv). The Master / Agents of the vessel shall signal readiness to sail only in accordance with favourable tidal and weather conditions.

   (v). The time limit of 4 hours prescribed for cessation of berth hire shall exclude the ship’s waiting period for want of favourable tidal conditions or on account of inclement weather or due to absence of night navigation facilities.

3. Sundays and Port non-working days will be treated as normal working days for levy of the above charges and no separate charge will be levied.

4. All vessels berthing at berths at Sr. Nos. (1) and (2) above for other than cargo operations, the berth hire charges shall be recovered as under :

   (i). Upto 10 days of occupation of berth: Normal berth hire charges.

   (ii). From 11th day to 20th day of occupation of berth: 150% of normal berth hire charges.

   (iii). After 21st day of occupation of berth: 200% of normal berth hire charges

5. No berth hire shall be levied for the period when the vessels idle at its berth due to breakdown of port equipment or power failure or any other reasons attributable to the port.

6. Priority / Ousting Priority Charges in addition to Normal Berth Hire Charges as stated below or as and when changed by the Govt. or appropriate authority will be applicable:

   (a). For providing the “priority berthing” to any vessel, a fee equivalent to berth hire charges for a single day or 75 percent of the berth hire charges calculated for the total period of actual stay at the berth, whichever is higher shall be levied.

   (b). For providing the “ousting priority” to any vessel, a fee equivalent to berth hire charges for a single day or 100 per cent of the berth hire charges calculated for the total period of actual stay at the Berth whichever is higher shall be levied. In addition, for providing “Ousting priority” to any vessel, the charges for ‘shifting in’ and ‘shifting out’ of the vessels shall be collected.

   (c). The fee for according priority/ ousting priority as indicated above shall be charged for all the vessels except the following categories:

      (i). Vessels carrying cargo on account of Ministry of Defence.

      (ii). Any other vessel for which special exemption has been granted by the Ministry of Shipping.

CHAPTER – III

CARGO RELATED CHARGES

The charges as herein after prescribed will be leviable on all traffic to OCT –

3.1. Schedule of wharfage on goods

<table>
<tr><th>No</th><th>Description of Goods.</th><th>Basis of Charge</th><th>Foreign (₹)</th><th>Coastal (₹)</th></tr>
<tr><td>1.</td><td>Motor vehicles and Cars Including bull dozers, forklifts, tractors, cranes and Military Tanks (Import & Export)</td><td>Ad-valorem</td><td colspan="2" rowspan="6">The wharfae charges would be levied at the level of MBPT wharfage charges as applicable from time to time.</td></tr>
<tr><td>2.</td><td>Rail cars</td><td>Per Wagon</td></tr>
<tr><td>3.</td><td>Defence Stores and Defence equipment/ machinery.</td><td>Tonne</td></tr>
<tr><td>4.</td><td>All items other than those specified above.</td><td>Ad-valorem</td></tr>
<tr><td>5.</td><td>Iron and Steel Materials (Import)</td><td>Tonne</td></tr>
<tr><td>6.</td><td>Iron and Steel Materials (Export)</td><td>Tonne</td></tr>
</table>

GENERAL NOTES TO SECTION 3.1 (A):

1. Wharfage leviable on ad-valorem basis in the foregoing schedule will be levied on the CIF value of goods in the case of imports and FOB value of goods in the case of exports and on value specified in the bill of coastal goods in the case of coastal cargo. Wharfage leviable on weight basis in the foregoing schedule will be assessed on gross weight of the goods as shown in the Bill of Lading, Manifest or Invoices.

2. For the assessment of wharfage on import or export goods, the importer or the exporter or their clearing agent, as the case may be, shall produce copy/ copies of the invoices/specification attested by Customs together with the Customs documents such as Bill of entry/ Shipping Bill/ Transhipment Permit as required under Docks Bye-Law No.96 issued

by MBPT, for the purpose of assessment and verification of charges. For any misdeclaration of weight, quantity, value or description of goods, the importer/exporter or his clearing agent, as the case may be, will be liable for action under Section 115 of the Major Port Trusts Act, 1963.

3. Wharfage as applicable to transshipment cargo as provided in Note 4 (b) below shall be recoverable in case of cargo discharged from one hatch of a vessel and reshipped in another for trimming or re-arranging the vessel's cargo either by lighters from overside or over the Docks wharves.

4. a). Transhipment cargo, if discharged and re-loaded on to the same vessel/ another vessel, single wharfage shall be leviable for both movements and demurrage on expiration of the free period of three days as admissible to import cargo will be levied.

   b). Cargo where advalorem rates are specified and not destined for OCT, wharfage @ ₹235/- per tonne in case of transshipment by sea and ₹101/- per tonne in case of transshipment by road shall be levied.

   c). Empty Mafis which are not destined for OCT, wharfage @ ₹ 235/- per tonne in case of transshipment by sea and ₹101/- per tonne in case of transshipment by road shall be levied.

5. Damaged Goods:

   a). Cargo landed from vessels loading in OCT owing to fire or other accidental cause and re-shipped or from vessels returned to Port by reason of the same cause or stress of weather will be charged one wharfage prescribed in the above Schedule.

   b). In respect of Iron and Steel materials, shifting of cargo from the wharf (hook point) to the storage point will not be undertaken by the ICTPL.

6. Shippers' own container: For recovery of wharfage on empty SOC unit, tare weight of 20' container will be considered as 2.3 MT; 40' container as 4.0 MT and 45' container as 4.5 MT.

7. Before classifying any cargo under unspecified category in the wharfage schedule, the relevant Customs classification shall be referred to find out whether the cargo can be classified under any of the specific categories mentioned in the wharfage schedule. However, in respect of Defence Stores and Defence equipment/machinery, which can be classified under Rate No.3 of Section 3.1, such reference to Customs classification will not be applicable.

8. Re-export cargo: For the re-export cargo, import wharfage will be recovered and demurrage shall be recovered till the date of shipment/stuffing and thereafter export wharfage will be recovered.

9. "Defence stores" would include 'Bombs, grenades, torpedoes, mines, missiles, and similar munitions of war and parts thereof: cartridges and other ammunition and projectiles and parts thereof, including shot and cartridges wads' coming under Arms, Ammunition, parts and accessories thereof but the reference to "parts thereof does not include radio or radar apparatus as per note no. 2 of Chapter no. 93 of Customs Tariff of India.

CHAPTER – IV

4.1. Composite charges on Cargo containers handled with Quay Side Gantry Cranes

Description	Containers upto 20'				Containers Above 20' & upto 40'				Containers length above 40'			
	Rates for Foreign Containers (in ₹)		Rates for Coastal Containers (in ₹)		Rates for Foreign Containers (in ₹)		Rates for Coastal Containers (in ₹)		Rates for Foreign Containers (in ₹)		Rates for Coastal Containers (in ₹)	
	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty	Loaded	Empty
General Containers	The charges would be levied at the MBPT charges as applicable from time to time.											
Transhipment & Same Bottom												

Containers	
Export containers brought by Barges under Shipping Bills from other ports for shipment	
Containers moved by barges between ICTPL & other ports	

Notes:

(i). Cargo container means specifically designed container of uniform size for consolidating goods within compact unit.

(ii). The above charges include wharfage, on board stevedoring charges, handling at shipside, lift on of export/lift off import containers at the pre-stack area, removal of container between shipside and pre-stack.

(iii). Additional services of loading/unloading of containers on to the Agents' trailers.

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