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**TARIFF AUTHORITY FOR MAJOR PORTS**

**G.No. 318**

**New Delhi,**

**23 August 2018**

**NOTIFICATION**

In exercise of the powers conferred by Section 49 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of the proposal received from Kolkata Port Trust for review of rent of Dhobitalao Container Park (Zone 28f of Schedule of Rent effective from 07.04.2011 to 06.04.2016), as in the Order appended hereto.

**(T.S. Balasubramanian)**  
Member (Finance)

**Tariff Authority for Major Ports**  
**Case No. TAMP/86/2016-KOPT**

Kolkata Port Trust

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**QUORUM**

Applicant

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

**ORDER**

(Passed on this 31<sup>st</sup> day of July 2018)

This case relates to a proposal received from Kolkata Port Trust (KOPT) for review of rent of Dhobitalao Container Park (Zone 28f of Schedule of Rent effective from 07.04.2011 to 06.04.2016).

2.1. During the proceedings relating to fixation of lease rentals for the lands and buildings of KOPT at Kolkata and Haldia in the year 2011, the KOPT had introduced rentals for 'Dhobitalao Container Park' (DCP) at ₹6562/- per 100 sq.m per month. Based on the proposal of KOPT, this Authority vide its Order no. TAMP/7/2010-KOPT dated 19 January 2011 had, inter alia, approved the rentals for 'Dhobitalao Container Park' at ₹ 6562/- per 100 sq.m per month, for the period of five years from 2011 to 2016, as proposed by the Port.

2.2. The rental so fixed for the DCP area was challenged by some of the users in the Hon'ble High Court of Calcutta as well as before the Learned Rent Controller at Alipore.

2.3. In this backdrop, and taking into account the users objections, the KOPT has come up with the subject proposal in November 2016 for reducing the rental for DCP area from ₹ 6562/- per 100 sq.m per month to ₹ 4972/- per 100 sq.m per month for the period from 07 April 2011 to 06 April 2016.

2.4. When the KOPT was requested vide our letter dated 5 December 2016 to confirm that the rental with regard to DCP area is not subjudice and whether this Authority can go ahead with the proposal in reference, the KOPT vide its letter dated 28 December 2016 confirmed that the matter pending in the Hon'ble Court with regard to the DCP area has been dismissed and that no case is pending in Hon'ble Court regarding the rental fixed for DCP area.

2.5. Since it was not clear from the submissions made by KOPT, whether the pendency of cases before the Learned Rent Controller will make the matter subjudice, the KOPT was again requested vide our letter dated 27 January 2017 to confirm whether this Authority can go ahead with the proposal in reference. In this regard, the KOPT vide its letter dated 02 May 2017 has clarified that since the Rent Controller is not empowered to fix rent in respect of properties of KOPT, it has confirmed that this Authority can go ahead with the proposal of KOPT for revision of rate of rent of Dhobitalao Container Park.

2.6. It is relevant here to mention that subsequent to fixing the rentals for the land and buildings of KOPT at Haldia and Kolkata in the year 2011, this Authority vide its Order no. TAMP/62/2016-KOPT dated 29 March 2017 has revised the rentals for the land and buildings of KOPT at Haldia and Kolkata including DCP area for the period of 5 years from 07 April 2016 to 06 April 2021. The rental fixed for the DCP area to be effective from 07 April 2016 has been fixed at ₹ 5489/- per 100 sq.m per month.

3.1. The submissions made by KOPT vide its proposal no. Lnd.464/f/RIC/Addi(XVII(Loose)/2802 dated 18 November 2016 are summarized below:

- (i). The Schedule of Rent (SOR) of KOPT was made effective from 7 April 2011 vide TAMP Order dated 19 January 2011 duly notified in Gazette of India on 8 March 2011. The said Order prescribed the rate of rent of ₹. 6562/- per 100 sqm. per month for Dhobitalao Container Yard [Zone 28(f)].
- (ii). Thereafter, the tenants/ occupants of the Dhobitalao Container Yard [Zone 28(f)] represented against such rate in various forums including TAMP. However, TAMP vide its letter No. TAMP/7/2010-KOPT dated 26 August 2011 had disposed their representations on the ground that there was no apparent error in the Tariff Order.

(iii). The hike of rate in respect of DCP is as follows:

Zone no	Description	Rate in 1996 Schedule	Rate in 2011 Schedule
28(f)	Dhobitalao Container Park	No separate zone	New Zone 28f @ ₹. 6562/- per 100 sqm per month
9	C.G.R Road from Gate no 5 NSD upto Gate No. 9 NSD [prior to 2011 SOR, Dhobitalao was considered to be a part of this zone]	₹. 610/- per 100 sqm per month This initial rate, duly enhanced by 5.1% per annum for each passing year as per 1996 schedule, became ₹. 1224/- as on 06.04.2011.	₹. 3756/- per 100 sqm per month w.e.f 07.04.2011

(iv). The tenants / occupants of Zone 28(f), while expressing grievances against this rate, had not made the payment of KOPT licence fees/ compensation bill in full, as a "mark of protest". As a result, the following actions had to be taken by KOPT:

- (a). The license had to be terminated by KOPT for nonpayment of enhanced rental since 07.04.2011. Such dues have been accumulating since 07.04.2011 (i.e the date of effect of the 2011 SOR), for most of the tenants.
  - (b). Many ex-licensees have approached the Rent Control Authority challenging the higher rate. KOPT has challenged the Rent Controller authority on jurisdiction issue, as KOPT properties are not covered by Rent Controller Act.
  - (c). Lone attempt after 07.04.2011 to tender out the vacant plots has not been successful, presumably due to exorbitant rate of licence fee.
  - (d). Many entities including M/s Balmer Lawrie, M/s Tara Marine, M/s Roadwings, M/s Transafe and M/s Patvolk surrendered their plots, presumably due to exorbitant rate of licence fee. The KOPT could adjust the outstanding dues from Security Deposit of such parties to some extent.
  - (e). The KOPT has also initiated proceedings against erring parties for eviction as well as for recovery of dues before the Ld. Estate Officer. The proceedings are still pending. In other words, number of litigations has increased as a direct fall out of the higher rate for Zone 28(f) in the 2011 Schedule.
  - (f). Such litigation coupled with surrender of some plots have adversely affected storage of empty containers and revenue potential of KOPT. On the other hand, unauthorized dumping of containers at those vacant plots is also taking place intermittently.
- (v). In consideration of abnormal hike in respect of few zones in the SOR 2011 of KDS, the KOPT constituted a Committee to look into the details of rate analysis. It was noted by the Committee that in respect of zone 28(f), TAMP, while processing the Tariff proposal, multiplied the highest rate obtained through tender for licence of the relevant zone, by 1.32 i.e. the premium factor (to compensate non-levy of premium equivalent to 4 years rent) applicable only in case of long term leases.
- (vi). As all plots of this zone are allotted on licence basis for storage of empty containers, such premium factor should not be taken into consideration in this case. Accordingly, the committee recommended rationalization of rate for zone 28(f), to ₹4972/- by taking out the premium factor 1.32 from ₹ 6562/- as on 07.04.2011.
- (vii). Land Allotment Committee in its meeting held on 16.06.2014, decided that such reduced rate would be recommended to TAMP, only if original updated rate failed to make any response in tender for allotment of Dhobitalao land. The licensing policy for KOPT was approved by KOPT Board on 26.11.2015 and no tender for license could be done since Land Policy 2014 came into effect (except for a special tender for Fee Parking zones which went without response.)
- (viii). (a). Meanwhile, the KOPT has appointed M/s Colliers International (India) Property Services Pvt Ltd as Valuer and based on a final report submitted by Valuer, the Board has

recommended the proposed SOR and the KOPT had submitted its proposal for the subsequent period vide letter dated 29.09.2016 to TAMP.

(b). As there was no accepted tender rate in Zone 28(f) from 07.04.2011 to 06.04.2016, (during the original validity period of SOR, 2011), the Board recommended a rate of ₹. 5489/- per 100 sq. m per month for this zone which is based on the updated matured tender rate obtained prior to 07.04.2011, to be applicable during the subsequent period from 07.04.2016 to 06.04.2021.

3.2. In view of the above, the KOPT has proposed the rate of rent in respect of Dhobitalo Container Park [zone 28(f) of 2011 SOR] of ₹4972/- per 100 sq. m per month, in place of ₹. 6562/- w.e.f. 07.04.2011 with yearly escalation of 2% p.a. during the validity of SOR.

3.3. The Board has approved the reduction of rate of rent in respect of DCP area to ₹ 4972/- per 100 sq.m. per month vide its Resolution no. R/76/KDS/EST/3/08/2016 dated 24 August 2016.

4.1. At our request, the KOPT has furnished a copy of the Minutes of the Meeting of the Land Allotment Committee (LAC) with regard to the subject proposal. The LAC is seen to have been headed by Dy. Chairman of KDS and consisting of FA & CAO, Chief Engineer, Secretary i/c, Traffic Manager i/c and Estate Manager as other members of the Committee.

4.2. From the Report of the LAC, it is seen that the LAC has recommended to reduce the rent in respect of DCP area to ₹ 4972/- per 100 sq.m per month with effect from 07 April 2011, subject to approval of the Board and this Authority. It has also been recommended by the LAC that endeavor should be made to reach consensus among the stakeholders, prior to sending the rate proposal to this Authority.

5. In accordance with the consultative procedure prescribed, a copy of the KOPT proposal dated 18 November 2016 was forwarded to the concerned users/ user organizations, seeking their comments. Some of the users / user organisations have furnished their comments. The said comments were forwarded to the KOPT as feedback information. The KOPT has not responded on these comments till the finalization of this case.

6.1. A joint hearing on the case in reference was held on 22 March 2018 at the KOPT premises. At the joint hearing, the KOPT made a brief Power Point presentation of the proposal. During the joint hearing the KOPT and other users / user organisations have made their submissions.

6.2. During the joint hearing, some users have furnished their comments. These comments were forwarded to KOPT. After reminders dated 27 March 2018, 29 May 2018 and 04 July 2018, the KOPT has responded vide its letter dated 12 July 2018.

6.3. Based on the discussions that took place during the joint hearing, the KOPT was requested vide our letter dated 27 March 2018 to clarify/ furnish some information. After reminders dated 27 March 2018, 29 May 2018 and 04 July 2018, the KOPT has responded vide its letter dated 12 July 2018. The information sought by us and the response of KOPT thereon are tabulated below:

Sl. No.	Information/ clarification sought	Response of KOPT
(i).	The rentals fixed for the DCP area in the year 2011 has been challenged by some of the users in the Hon'ble High Court of Calcutta as well as before the Learned Rent Controller. Considering that it has been reported by one of users during the joint hearing that petitions before Rent Controller are pending, the KOPT to categorically confirm that the fixation of rental with regard to DCP area is not subjudice and has not been stayed by the Hon'ble Court / Rent Controller and that the Authority can go ahead with the proposal in reference.	As confirmed by the KOPT's legal Department, no stay order has been granted by the respective Courts [i.e. Kolkata High Court, Learned Alipore Court and Learned Rent Controller] in respect of fixation of rent for Dhobitalao Container Park.
(ii).	As already requested vide our letter dated 28 February 2018, KOPT to list down the observations, based on which, the stakeholders have given their consent for proposed reduction of rentals for Dhobitalao area.	The issue was taken up for discussion with the stakeholders of Dhobitalao area when they communicated their consent towards proposed reduction, with certain conditionality. They further stated that they would place their observations before TAMP, during hearing. Thus, Bay Container Terminal Pvt Ltd, Marine Container Services (I) Pvt Ltd and Seahorse Shipping and Ship

		Management Pvt Ltd have conveyed their acceptance of revised rate of ₹ 4972/- with some conditionality vide their letter dated 13 March 2018 to TAMP.
(iii).	The KOPT to furnish a copy of the Report of the Committee constituted to look into the details of the rate analysis of DCP area.	The report of the Committee constituted to look into the details of the rate analysis of DCP area is not available in this Office. However, report of the Land Allotment Committee is furnished by KOPT.
		Considering the above and to avoid further reduction of rent wef 7.4.16 and to avoid loss of revenue on account of GST/ Service Tax, it is requested that rate of rent in respect of Dhobitalao Container Park [zone 28(f) of 2011 SOR] to ₹ 4972/- per 100 sq.m per month in lace of ₹ 6562/- wef 6.4.11, with yearly escalation of 2% per annum during the validity of SOR of 2011, as recommended by KOPT Board.

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

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

- (i). The existing Rent Schedule for the Land and Buildings of Kolkata Port Trust (KOPT) at Kolkata and Haldia was last approved by this Authority vide its Order no. TAMP/62/2016-KOPT dated 27 March 2017 for a period of five years. The Rent Schedule has come into effect from 07 April 2016 and is valid for a period of five years upto 06 April 2021.

Prior to this revision, the Rent Schedule for the Land and Buildings of KOPT at Kolkata and Haldia was approved by this Authority vide its Order no. TAMP/7/2010-KOPT dated 19 January 2011 for a period of five years. This Rent Schedule came into effect from 07 April 2011 and was valid for a period of five years upto 06 April 2016. In the Rent Schedule approved in the year 2011, separate rental was prescribed for the Dhobitalao Container Park (DCP) area, as proposed by the KOPT then.

- (ii). For determining the monthly rental for the DCP area in the year 2011, the market value of the land for the DCP area was assessed by the KOPT as per the two methods given in the Land Policy Guidelines of 2004; and, rental was derived by KOPT as given below:
- (a). Rental as per Sub Registry Officer (SRO) method at ₹3210/- per 100 sq. mtr per month.
- (b). Rental as per method of highest accepted tender rates for similar transactions at ₹. 6562/- per 100 sq. mtr per month. Under this method, the tender value obtained for the DCP area was updated to arrive at the updated tender rate as of the year 2008 and was further enhanced by a multiplication factor of 1.32.

Thus, vide the Order of January 2011, the monthly rental for the DCP area at Kolkata (Zone 28(f) of Schedule of Rent) was prescribed at ₹ 6562/- per 100 sq.m per month, being the highest amongst the two methods, as proposed by KOPT, at that relevant point of time.

- (iii). As brought out in the earlier part of the Order, there were representations and litigations with regard to high rental fixed for DCP area. The KOPT has reported about some parties in DCP area surrendering their plots. The KOPT has also reported about it terminating the licence in respect of some parties for non-payment of enhanced rentals and has also reported to have initiated eviction proceedings against parties who have erred in paying the enhanced rental. It has also been reported by KOPT that an attempt made by it to tender out the vacant plots at DCP area was not successful presumably due to exorbitant rate of licence fee. It is in this backdrop, that the KOPT has come up with a proposal under reference to reduce the rental fixed for the DCP area in the year 2011. The proposal of KOPT has the approval of its Board of Trustees.

(iv). The KOPT has confirmed that the matters pertaining to DCP area in the Hon'ble High Court of Calcutta have been dismissed. With regard to the matter pending before the Learned Rent Controller against rate of rent fixed for DCP area, the KOPT has confirmed that the Rent Controller is not empowered to fix rent in respect of properties of KOPT. Thus, the KOPT has confirmed that this Authority can go ahead with the proposal of KOPT for revision of rate of rent of DCP area. The KOPT has also confirmed that rental for the Dhobitalao Container Park has not been stayed by Hon'ble Calcutta High Court, Learned Alipore Court and Learned Rent Controller. Accordingly, the proposal of KOPT has been taken up for disposal, based on the confirmation given by the KOPT.

(v). In order to review the lease rental of DCP area, the KOPT has reported to have constituted an Internal Committee. The said Committee is reported to have noted that while deciding the rental for the DCP area in the year 2011, this Authority has multiplied the highest rate obtained through tender for licence of the relevant zone by a premium factor of 1.32 (to compensate non-levy of premium equivalent to 4 years rent) applicable only in case of long term leases. Since all the plots of this zone are allotted on licence basis and not on long term lease basis, such premium factor should not have been taken into account.

In this regard, it is to state that while valuing the Lands at KDS (including the DCP area) in the year 2010, based on highest accepted tender rates, the KOPT had stated that it had obtained the tender value and updated it to arrive at the updated tender rate as of the year 2008. The updated tender value so obtained by KOPT had been further enhanced by KOPT by 1.32 times, to factor the loss of upfront premium payment, collected as per 1996 notification. In this connection, as per the Rent Schedule for land and buildings at KDS approved by the Government in the year 1996, the KOPT was required to collect non-refundable non-adjustable upfront premium equivalent to 4 years' rent incase of long term leases for the period of 15 years. The Land Policy Guidelines, 2004, did not stipulate collection of upfront premium incase of annual lease. The KOPT proposed to dispense with the collection of upfront premium. Thus, as against the then existing practice of collecting upfront premium alongwith the monthly rentals, the KOPT as per the revised practice would only earn the monthly rentals. Hence, in order to facilitate a like to like comparison between the existing and proposed arrangement, the KOPT had then arrived at a factor of 1.32 upfront premium and enhanced the updated tender value.

Thus, it can be seen that it was the proposal of the KOPT to enhance the updated tender value by a factor of 1.32, to facilitate a like to like comparison between the then existing and the then proposed arrangement. Therefore, the statement that this Authority had applied the premium factor of 1.32 to arrive at the rental for the DCP area is not factual. It was only the proposal of the port, which was approved by this Authority then.

(vi). Now, the Committee constituted by the KOPT has recommended to take out the premium factor of 1.32, which had been built in, while arriving at the rental of ₹ 6562/- per 100 sq.m per month, in the year 2011. Accordingly, the committee has recommended the lease rental for the DCP area at ₹ 4972/- per 100 sq.m per month.

(vii). As brought out in the earlier part of the Order, the lessees of the DCP area have requested the rental of the DCP area to be fixed at ₹ 3756/- per 100 sq.m per month, reportedly based on a 100% capping.

In this regard, it is relevant here to mention that the current proposal filed by the KOPT for review of the lease rental for the DCP area, which was taken up on consultation with the relevant stakeholders, had included a copy of the resolution of the Board of Trustees of KOPT approving the subject proposal in reference. In addition, the proposal of KOPT had also included a copy of the Board Resolution with regard to another proposal of KOPT for fixing the rentals for the lands and buildings of KOPT at Kolkata and Haldia for the period from 2016 to 2021. When the said proposal was before the Board of Trustees of KOPT, the Board of Trustees, for the reasons recorded, had recommended to cap the hike in rent for the land at KDS at 75% of the existing rates. Based on this proposal, the KOPT had approached this Authority and this Authority vide its Order no. TAMP/62/2016-KOPT dated 29 March 2017 had already approved the KOPT proposal.

Thus, the capping, as recommended by the Board of Trustees of KOPT was for fixing the rentals for the lands and buildings of KOPT at Haldia and Kolkata as a whole for the subsequent period from 2016 to 2021 and not for review of rental for the DCP area, for the earlier five year period from 2011 to 2016. As can be seen from the Board Resolution for the subject proposal

under reference, no capping has been decided by the Board of Trustees. The Board of Trustees have approved to reduce the rent in respect of DCP area to ₹ 4972/- per 100 sq.m per month, with effect from 07 April 2011. Thus, based on the approval of the Board, the KOPT has proposed to fix the rental in respect of DCP area to ₹ 4972/- 100 sq.m per month, with effect from 07 April 2011. Further, the rate of ₹ 3756/- per 100 sq.m per month as suggested by the lessees is seen to be the rate approved for CGR area. It is not based on 100% capping.

- (viii). The reduction in rental proposed by KOPT emerges on account of withdrawal of the multiplication factor of 1.32 which was relevant for allotment of land for long term lease basis and not for allotment of land on short term license basis as in the case of DCP where land is allotted on short term license basis. It is the correction of approach wrongly adopted by KOPT earlier in deciding the rental for DCP. The position that the land at DCP area is allotted on short term license basis is brought out by KOPT only now. Given that the recommendation of the LAC has been approved by the Board of Trustees of KOPT and will give some respite to the allottees in the DCP area, this Authority is inclined to approve the proposal of the port and fix the rental in respect of DCP area at ₹ 4972/- 100 sq.m per month, with effect from 07 April 2011.
- (ix). Further, as requested by the Port, the revised rental for the DCP area shall be deemed to have come into effect from 07 April 2011 to 06 April 2016, being the period covered by the Order no. TAMP/7/2010-KOPT dated 19 January 2011 fixing lease rentals for the lands and buildings of KOPT at Kolkata and Haldia in the year 2011.
- (x). The users have objected to the rental proposed by the Port on the ground that there is no basic infrastructure, proper roads and illumination at DCP area. In this regard, at the joint hearing, the KOPT has stated that they have already initiated steps to improve the facilities at DCP area. The KOPT is advised to take steps expeditiously to improve the basic infrastructure at DCP area. With regard to the objection to the rate, it is relevant here to mention that the rate of DCP area is being revised now by keeping all the parameters that had prevailed in the year 2011, the same. No new factors have been introduced by the Port. The Port has only sought to withdraw the upfront premium factor, which was applied then, on the ground that all the plots of DCP area are allotted on licence basis and that only with regard to long term lease, the upfront premium ought to have been applied.

9.1. In the result, and for the reasons given above and based on collective application of mind, the Sl. No. 28(f) of Section – I – Lands under the Schedule of Rent for Land, Warehouses and Buildings of Kolkata Port Trust at Kolkata Dock System (as applicable for the period from 07 April 2011 to 06 April 2016, being the period covered by the Order no. TAMP/7/2010-KOPT dated 19 January 2011 fixing lease rentals for the lands and buildings of KOPT at Kolkata and Haldia in the year 2011) is replaced with the following:

Sl. No	Description of Land	Rate of Rent Per 100 Sq.mtrs. Per month	
		First Belt (₹.)	Second Belt (₹.)
28(f)	Dhobitalao Container Park	4972/-	NA

9.2. The other terms and conditions forming part of the Rent Schedule approved in the year 2011 shall continue to govern the rate for the DCP area also.

10. The revised Rent Schedule for the DCP area shall be deemed to have come into effect from 7 April 2011 and shall be deemed to have been valid upto 6 April 2016, with applicable escalation factor.

**(T.S. Balasubramanian)**  
Member (Finance)

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

<b>F. No. TAMP/86/2016-KOPT</b>	<b>Proposal received from Kolkata Port Trust (KOPT) for revision of rent of Dhobitalao Container Park (Zone 28f of Schedule of Rent effective from 07.04.2011 to 06.04.2016).</b>
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A summary of comments received from the users are given below. The KOPT has not furnished its comments on the comments of users.

- 1. The Hindustan Engineering & Marine Corporation (HEMC)**
- 2. ICT Infrastructure Pvt Ltd (ICTI)**
  - (i). We appreciate the revision of rent with retrospective from 07.04.2011 to 06.04.2016 at the rate of ₹. 4972/- as proposed by KOPT as against the previous SOR of 2011 of ₹. 6562 per 100 sq. meter.
  - (ii). But the revision of rent based upon the principle laid down in item no. A/17/KDS/EST/3/08/2016 at page no. 8 of the KOPT proposal where revision of SOR for Land & Building of KOPT and Haldia is proposed to be increased at 100% of existing rates, is not clear.
  - (iii). We agreed on the proposal with 2% escalation per annum and upon this principle the rent of land DCP would not become ₹. 4972/- per 100 sq. meter as proposed by the KOPT for DCP.
  - (iv). We fail to understand why DCP is considered as a Special case in Determination of SOR going out of the principle laid down for other land and Building.
  - (v). The SOR of 2011 is totally unfair for DCP and for that unfairness of SOR the litigation has come up and relation between port and Tenant come is strained.
  - (vi). Therefore, it is requested to consider SOR of DCP with the General principle laid down in item no. A/17/KDC/EST/3/08/2016 and not considered DCP under the item no. A/18/KDS/EST/3/08/2016 as a special one. If the General principle taken in determination of SOR of DCP, the whole dispute and litigation between the parties will be resolved.
  - (vii). Our earlier submission in 2011 is reiterated that how can DCP's rates come to ₹. 6562 per 100 sq mtr, as DCP area comes within the area of Circular Garden Reach Road from gate no. 5 NSD upto gate no. 9 NSD, for which rate is ₹ 3756/- for 100 sq.mtr.
- 3. Common points by Bay Container Terminal Pvt Ltd (BCTPL), Marine Container Services (I) Pvt Ltd (MCSPL) and Seahorse Shipping and Ship Management Pvt Ltd (SSSM)**
  - (i). Each of these companies are holders of KOPT land in DCP on legitimate lease and are engaged in storage and repairs of Empty Containers of Shipping Lines and International Container Leasing Companies since early nineteen nineties. The submission is made on behalf of the above 3 companies.
  - (ii). There are serious grievance and disappointment at the 500% increase in land ground rent of DCP of KOPT by the SOR effective 07.04.2011 which has unnecessarily resulted in numerous Court Cases which does not benefit anyone. The KOPT has also admitted in its letter "Lnd/464/F/RFC/addl(XVII(loose)/2808 dated 18.11.2016 that the rent increases were exorbitant.
  - (iii). During early 2016, there was meeting between KOPT Estate Manager and his Senior Officials and Traffic Manager with Director of these 3 companies to discuss possibilities of "Out of Court Settlement" for the DCP exorbitant rent matters. Their offer to reconsider the exorbitant rent as per SOR of 07.04.2011 was welcomed by the Director of these 3

companies. Thereafter, a few similar meeting took place in 2016 alongwith the other plot holders of DCP.

- (iv). The final offer of ₹. 4972/- per 100 sq. mtrs. per month retrospective w.e.f. 7.04.2011 in place of ₹. 6562/- and a 2% annual increase till 06.04.2016 was "in principle" accepted by the Director for their 3 companies. The Director has categorically informed the Estate Manager that other condition of "withdrawal of all Evacuation notices, no interest payable on past dues, no penal rent on any past dues etc. would also be pre-conditions. These conditions were mutually and informally accepted by KOPT and Director of these 3 companies.
- (v). In the proposal of KOPT, at page no. 8, it is stated that in respect of KDS, the increase in land rent had been proposed to be capped at 100% of the existing rates, which would increase the income from Estate rental by 45%. The 100% cap was not known to us during the informal meetings with KOPT. Does this not mean that even ₹ 4972/- per 100 sq. mtrs per month w.e.f. 07.04.2011 is higher than the 100% cap?
- (vi). All the 3 companies have been regularly paying the monthly rents to KOPT post 07.04.2011 for all plots in DCP but at the pre 2011 SOR.
- (vii). After the joint hearing and when the revised land rent in DCB is finalized and gazetted with effective from 07.04.2011, it is agreeable to pay the retrospective differential amounts to KOPT for the 3 companies, subject to the following conditions:
  - 1. All DCP plot eviction notices served on above 3 companies to be withdrawn unconditionally with no victimization of any of 3 companies in any manner whatsoever.
  - 2. Cancelled Lease Licenses of 3 companies at DCP to be revoked and automatically renewed to allow 'unhindered working atmosphere'.
  - 3. No interest is payable on the late payment of the differential amounts for the period 07.04.2011 till date.
  - 4. No penalties or actions of any kind to be implemented by KOPT for the period 07.04.2011 till date nor in future, unless defaulted by companies.
  - 5. After TAMP approval on revision of rent rate of DCP for the period 07.04.2011 to 06.04.2016, KOPT to issue letters confirming their concurrence to all terms and conditions listed here.
  - 6. Relative monthly revised invoices from 07.04.2011 to be raised on 3 companies as per TAMP approved rate duly deducting amounts already paid by companies. Hence only the differential amounts between pre 2011 SOR and port revised 2011 SOR will be payable by 3 companies.
- (viii). Upon all parties agreeing to the above terms and conditions, the Lawyers of companies and that of the KOPT to appear in Court and pledge "withdrawal of all cases, eviction notices etc. to mutual understanding and satisfaction of all concerned.

2.1. A joint hearing on the case in reference was held on 22 March 2018 at the KOPT premises. At the joint hearing, the KOPT made a Power Point presentation of the proposal. The KOPT and other users / user organisations have made the following submissions during the joint hearing:

### **Kolkata Port Trust**

- (i). The rental for the DCP area was fixed in the year 2011. It was substantially higher and had adverse effect on KDS.

- (ii). Prior to 2011, the DCP area formed part of the CGR Road and rentals were levied. In the year 2011, the DCP area was segregated from CGR Road and a new zone for DCP area was incorporated. This resulted in a hike in rental by more than 300%.
- (iii). Tenants/ Occupants represented in the Hon'ble High Court of Calcutta and before the Learned Rent Controller. They also represented to TAMP. TAMP disposed of their representation on the ground that there was no apparent error in the Order.
- (iv). When the parties defaulted, KOPT terminated their licences, initiated eviction proceedings. Some parties surrendered their plots. This has impacted the revenue potential of the port.
- (v). The KOPT constituted a Committee to look into the details of rate analysis. The Committee noted that for DCP area, TAMP has multiplied the highest rate obtained through tender for licence of the relevant zone by a premium factor of 1.32, which was applicable only in case of long term leases.
- (vi). Removal of this premium factor will lead to a rate of ₹.4972/- per 100 sq.m., as against ₹. 6562/- per 100 sq.m., fixed in the year 2011.
- (vii). KOPT Board has approved the rentals for DCP area of ₹.4972/- per 100 sq.m with effect from 07.4.2011.
- (viii). TAMP is requested to consider the KOPT proposal.
- (ix). KOPT has also taken steps to address user's concerns. It is taking up repairs of the road in the DCP area, connecting roads, illumination, lighting etc.
- (x). Prior to 2011, the DCP area formed part of the CGR Road. In the year 2011, the DCP area was segregated from CGR Road on the ground that the area in CGR Road was for long term lease and the DCP area was for storing of empty containers on license basis. Therefore, rate differential should be there.
- (xi). We agree that the infrastructure at DCP area is inadequate. However, we have initiated steps to improve the facilities at DCP area.
- (xii). We would go with the rate of ₹. 4972/-, as approved by the Board of KOPT.  
(TAMP: Has the High Court stayed levy of rentals fixed for DCP area in 2011?)
- (xiii). We will confirm the status of petition filed before Court / Rent Controller.

**Representative on behalf of Bay Container Terminal, Marine Container Services and Seahorse Shipping**

- (i). DBC was part of CGR Road till 2011. Hence, the rate of DBC should be made at par with CGR Road, which is ₹.3756/- per 100 sq.m.

- (ii). There is no basic infrastructure, no proper roads, no illumination at DBC.
- (iii). The marshy swamp land allotted to us has been developed by us. We are fending for ourselves. There is no justification for the steep increase in rentals. The other areas where empty containers are handled like in DCP area and are in nearby areas, the rentals there are almost 75% less as compared to DCP area. Our petitions before Rent Controller are pending.
- (iv). When the KOPT had met us in the past to discuss possibilities of “Out of Court Settlement”, we had in principle agreed to the rate of ₹. 4972/. Subsequently, we understand that the increase in rentals has been capped at 100% of the existing rates by the Trustees of KOPT. The 100% cap was not known to us during the informal meetings with KOPT. We want the rental to be fixed at ₹. 3756/-.
- (v). The consent to the reduction is also subject to certain conditions viz., unconditional withdrawal of eviction notices, no levy of interests, penalties etc. We also agree to withdraw the petitions filed before Rent Controller after TAMP passes the Order.

### **ICT Infrastructure**

- (i). We also agree to the capping at 100% of the existing rates alongwith an annual escalation of 2% p.a.
- (ii). We also want the rental to be fixed at ₹. 3756/-.
- (iii). The state of the DCP area is very bad.

### **HMCC**

The marshy swamp land allotted to us has been developed by us. There is no justification for the steep increase sought by the KOPT. We also want the rental to be fixed at ₹. 3756/-. Only maintenance and storage of containers at DCP is possible. Nothing else.

2.2. During the joint hearing, some users have furnished their comments. A summary of the comments received from users / user organisation and the comments of KOPT thereon are summarised below:

<b>Sl. No.</b>	<b>Comments of users/ user organisations</b>	<b>Comments of KOPT</b>
1. 2. 3.	<b>Common points of Bay Container Terminal Pvt Ltd (BCTPL), Marine Container Services (I) Pvt Ltd (MCSPL) and Seahorse Shipping and Ship Management Pvt Ltd (SSSM)</b>	
(i).	100% and 75% CAP has been referred to in the minutes of KOPT Trustees' meeting stated in KOPT Admin. Deptt. Letter no. Admin/7364 dated 1 September 2016. If the above 75% CAP is applied, the Dhobitalao Container Park	The users have mentioned that they are unable to understand why Dhobitalao Container Park was considered as a special case in determination of SOR going out of the principle laid down by

	rent (Zone 28F) should be lower than ₹. 4972/- .	TAMP for other land and building. Most of them have mentioned that KOPT had decided to cap at 100% of the existing rates at the time of implementation of new SOR w.e.f 07 April 2016. As per their arguments, land rent of Dhobitalao Container Park might be ₹ 3756/- in place of proposed rate of ₹ 4972/-. In this regard, the following is submitted:
(ii).	The KOPT's letter Ref. Lnd. 464/F/RFC/Addl(XVII(Loose)/2802 dated 18.11.2016 clearly states that Dhobitalao Container Park was a part of the CGR Road from No. 5 NSD to Gate No. 9 NSD prior to 2011. Subsequently it was renamed a new zone as 28F and unfairly the land rent was increased exorbitantly. Hence, Dhobitalao Container Park w.e.f 07.04.2011 should be the same as CGR Road @ ₹. 3756/- per 100 Sq. mtrs. per month.	(a). KOPT has decided to cap at 100% of the existing rates prevailing w.e.f 07.4.2011 at the time of implementation of new SOR w.e.f 07.04.2016.
(iii).	<p>Beside the above, BCTPL, MCSPL and SSSM have stated that they are agreeable to pay the retrospective differential amounts of KOPT, subject to following conditions:</p> <p>(a). All DCP plot eviction notices served on above 3 companies to be withdrawn unconditionally with no victimization of any of 3 companies in any manner whatsoever.</p> <p>(b). Cancelled Lease Licenses of 3 companies at DCP to be revoked and automatically renewed to allow 'unhindered working atmosphere'.</p> <p>(c). No interest is payable on the late payment of the differential amounts for the period 07.04.2011 till date.</p> <p>(d). No penalties or actions of any kind to be implemented by KOPT for the period 07.04.2011 till date nor in future, unless defaulted by companies.</p> <p>(e). After TAMP approval on revision of rent rate of DCP for the period 07.04.2011 to 06.04.2016, KOPT to issue letters confirming their concurrence to all terms and conditions listed here.</p> <p>(f). Relative monthly revised invoices from 07.04.2011 to be raised on 3 companies as per TAMP approved rate duly deducting amounts already paid by companies. Hence only the differential amounts between pre 2011 SOR and port revised 2011 SOR will be payable by 3 companies.</p>	<p>(b). For Dhobitalao, the rate under SOR wef 07.04.2016 was ₹ 5489/-, though the effective rate of the same place wef 7.4.11 was ₹ 6562/-. Subsequently, KOPT proposed to reduce the rent to ₹ 4792/- wef 7.4.11 in place of ₹ 6562/-.</p> <p>(c). The above rate effective from 07.4.16 appears to be not connected with the formula of 100% capping.</p> <p>(d). If KOPT considered land rent of Dhobitalao Container Park of ₹ 3756/- as on 7.4.11, as proposed by the tenant, revised rate of Dhobitalao Container Park wef 7.4.16 might be ₹ 8132/- after considering 100% capping of the existing SOR as on 7.4.11 i.e. after applying 2% annual escalation of ₹ 3756/- upto 7.4.15.</p> <p>(e). However, TAMP has approved SOR rate of ₹ 5489/- wef 7.4.16 for Dhobitalao Container Park which is 2% annual escalated rate of ₹ 4972/- (proposed rate wef 7.4.11). therefore, if KOPT further applied similar methodology i.e. 2% annual escalation on ₹ 3756/- as claimed by tenant as rent wef 7.4.11, the new rate wef 7.4.16 will be ₹ 4146.89</p> <p>(f). Therefore, considering further reduction of proposed rate from, ₹ 4792/- to ₹ 3756/- as demanded by tenants will lead to further downward revision of rate wef 7.4.16 from ₹ 5489/- to ₹ 4146.89. It is evident that the proposed rent of ₹ 4972/- wef 7.4.11 of Dhobitalao Container Park [zone 28(f)], if further reduced, as represented by the stake holders at this stage may lead to another downward revision of rate of Dhobitalao wef 7.4.16 in the event the formula is only 2% yearly is continued for Dhobitalao, where the KOPT did not adopt the formula of 100% cap at the time of preparation of revised SOR wef 7.4.16.</p> <p>(g). In this respect, it is mentioned that the KOPT has paid substantial amount of</p>

		<p>Service tax/ GST to the tax authority on enhanced rate [i.e. ₹ 6562/- per 100 sq.m as on 7.4.11 and ₹ 5489/- as on 7.4.16] of rent/ compensation bills without considering the fact whether payments were received or not as per provision of point of taxation rules. Further, downward revision of rate wef 7.4.11 and 7.4.16, KOPT may lose substantial amount on account of GST.</p> <p>(h). Same proposed rate was also accepted by most of the above mentioned tenants during discussion with port officials.</p>
<p><b>3.</b></p>	<p><b>The Shipping Corporation of India Ltd (SCI)</b></p>	
	<p>The SCI is a Govt. of India undertaking and uses only the Dhobitalao container depot for their empty container storage. While Shipping Corporation have continued to pay abnormally enhanced rate to KOPT during the period, the fact remains that even the suggested rate is abnormally high compared to the other plots like SONAI where other lines keep their containers. The increase in 2011 was 500% over old rates compared to the SONAI plot where the increase was only about 80%. The KOPT is requested to not only reduce the rate to nearer to SONAI rate and arrange to refund the amount with appropriate interest to SCI – The National Line of India. The KOPT is being the feeder port and must reduce all tariffs being the costliest port of the country if trade in the eastern corridor of the country is to grow.</p>	<p>According to SCI, even the suggested rate of ₹ 4972/- is abnormally high compared to other plots like SONAI where other lines keep their containers. The increase in 2011 was 500% over old rates as compared to SONAI plot where the increase was only about 80%. They have also mentioned that not to only reduce the rate to nearer to SONAI, rate and arrange to refund the amount with appropriate interest to SCI. In this regard, it is to state that KOPT is not in favour of further reduction of rent at Dhobitalao Container Park for the reasons given above. Regarding the conditionality as submitted by stakeholders including SCI during hearing, as well as through letters, the same may be examined as per laid down provisions, final SOR rates as notified by TAMP on case to case basis, in terms of decisions of KOPT on this issues.</p>

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