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TARIFF AUTHORITY FOR MAJOR PORTS

G.No. 397 **New Delhi,** **25 October 2018**

NOTIFICATION

In exercise of the powers conferred under 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 Mumbai Port Trust (MBPT) for prescription of wharfage compensation payable by Oil and Natural Gas Corporation Limited (ONGC) to MBPT for transportation of Crude Oil through the pipelines laid within the limits of MBPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/18/2018-MBPT

The Mumbai Port Trust - - - Applicant

QUORUM

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

O R D E R
(Passed on this 3rd day of October 2018)

This case relates to a proposal dated 28 February 2018 filed by the Mumbai Port Trust (MBPT) for prescription of wharfage compensation payable by Oil and Natural Gas Corporation Limited (ONGC) to MBPT.

2.1. The MBPT has entered into agreement with ONGC on 28 January 2005 responding to the permission sought by ONGC to lay two additional pipelines within the MBPT port limits on land as well as in the sea, one each for transportation of oil and for gas from Mumbai High field to Uran Terminal.

2.2. As per Condition No. 1 of Terms and Conditions (financial) of the Agreement, ONGC has committed to pay to the Mumbai Port Trust a compensation at one half (1/2) of wharfage rate as applicable on the per tonne of crude oil which will be imported into the Port of Mumbai through all or any of these ONGC pipelines and which is not exported through the MBPT Marine Oil Terminal, Jawahar Dweep through any other existing and future oil, Gas or Chemical Terminals of the MBPT".

2.3. The MBPT has stated in its proposal that Wharfage compensation towards cargo/ oil handled through ONGC pipeline was paid by ONGC towards provisional bill for F.Y. 2013-14 and final bill for F.Y. 2012-13. However, the ONGC vide its letter dated 12 December 2014 had requested to provide copy of TAMP's approval for wharfage compensation being collected from ONGC as per terms and conditions of agreement dated 28 January 2005 between MBPT and ONGC. On this pretext, ONGC withheld the payment of wharfage compensation on final bill for the year 2013-14 and provisional bill for the year 2014-15 and no payment has been made thereafter though regular bills/ demands were raised therefor by MBPT.

2.4. ONGC has contended that MBPT has imposed unreasonable wharfage compensation. The ONGC has stated that the issue has been taken up earlier by their Ministry with the Ministry of Shipping for referring the dispute to the Tariff Authority for Major Ports (TAMP) for adjudication in November 2010 and August 2014. However, no action has been taken till date.

2.5. The MBPT has submitted that, no service tax has been paid by ONGC for wharfage compensation on final bill for the year 2013-14 and provisional bill for the year 2014-15 and also no payments have been made by ONGC thereafter though regular bills/ demands were raised therefor. Mumbai Port Trust had to remit service tax amounting to ₹.18,93,70,172/- to the service tax authorities till 30.06.2017.

2.6. The MBPT has further submitted that, the ONGC vide letter dated 31 May 2017 has requested MBPT to provide TAMP's approval or the ruling/ remarks of the Ministry of Shipping for early resolution of the said dispute.

2.7. On the basis of the tonnage furnished by Head Marketing, ONGC, the MBPT raised bills on ONGC on 30.06.2017. However, these bills were also not settled by ONGC. The details of outstanding dues on account of wharfage compensation against ONGC, as furnished by MBPT, are as follows:

Year	Wharfage Compensation			Interest calculated upto 31.12.2017	Grand Total
	Amount	Service Tax	Total		
2005-06	0.00	0.00	0.00	0	0.00
2006-07	0.00	0.00	0.00	0	0.00
2007-08	0.00	0.00	0.00	0	0.00
2008-09	0.00	0.00	0.00	4362146.00	43,62,146.00
2009-10	0.00	0.00	0.00	0	0.00
2010-11	0.00	0.00	0.00	0	0.00
2011-12	0.00	2,71,66,813.00	2,71,66,813.00	24811505.00	51,978,318.00
2012-13	1.00	51,95,741.00	51,95,742.00	17,781,342.00	22,977,084.00
2013-14	12,12,14,831.00	1,49,82,153.00	13,61,96,984.00	86,336,099.00	222,533,083.00
2014-15	22,98,98,539.00	2,84,15,459.00	25,83,13,998.00	122,294,504.00	380,608,502.00
2015-16	28,99,26,435.00	4,20,39,333.00	33,19,65,768.00	103,566,306.00	435,532,074.00
2016-17	31,33,85,930.00	4,70,07,889.00	36,03,93,819.00	56076541.00	416470360.00
2017-18 (UPTO 30.6.17)	16,37,51,884.00	2,45,62,784.00	18,83,14,668.00	14,123,600.00	202,438,268.00
TOTAL	**1,11,81,77,620.00**	**18,93,70,172.00**	**1,30,75,47,792.00**	**429,352,043.00**	**1,736,899,835.00**

(say ₹.173.69 crores)

N.B: Interest is calculated / billed at the time of payment.

3.1. The MBPT submitted to its Board for seeking approval of TAMP to the rates for recovery of wharfage compensation levied as per the agreement between Mumbai Port Trust and Oil & Natural Gas Commission dated 28 January 2005 with retrospective effect. The proposal has been approved by Board vide TR No. 198 dated 09.01.2018.

3.2. Accordingly, the MBPT has sought approval of this Authority to insert the following provisions at clause 3.4 in Chapter – III of SOR, for recovery of wharfage compensation levied as per the agreement between Mumbai Port Trust and ONGC dated 28.01.2005 with retrospective effect as under:

"3.4 WHARFAGE COMPENSATION PAYABLE BY ONGC IN TERMS OF AGREEMENT dated 28.01.2005 SIGEND BETWEEN MBPT AND ONGC.

(a). ONGC shall furnish all Traffic throughout data for imported oil every year through the pipelines by the end of financial year as required by MBPT to enable the Traffic Manager, MBPT to prepare and raise the compensation bills inclusive of all associated charges and Government taxes and duties on crude oil. ONGC to ensure that all such bills are fully paid within one month of receipt of MBPT bills.

(b). ONGC shall pay to the Mumbai Port Trust a compensation at one half (1/2) of wharfage rate as applicable on the per tonne of crude oil which will be imported into the Port of Mumbai through all or any of these ONGC pipelines and which not be exported through the MBPT Marine Oil Terminal, Jawahar Dweep through any other existing and future Oil, Gas or Chemical Terminals of the MBPT.**"**

4. The MBPT has been maintaining in the past that the matter regarding way leave charges and compensation at 50% of wharfage does not fall under jurisdiction of the Authority on the ground that the matter was already settled mutually by Ministry of Shipping (MOS) and Ministry of Petroleum (MOP). However, now, the MBPT has sought approval of this Authority for the rates of recovery of compensation levied as per the agreement between MBPT and ONGC with retrospective effect presumably on the point made by the ONGC that the rate should be levied with the approval of TAMP.

5. The proposal of MBPT dated 28 February 2018 requires this Authority to *interalia,* prescribe that ONGC shall pay to the MBPT a compensation at one half (1/2) of wharfage rate as applicable on the per tonne of crude oil which will be imported into the Port of Mumbai through all or any of the ONGC pipelines and which is not being exported through the MBPT Marine Oil Terminal, Jawahar Dweep through any other existing and future Oil, Gas or Chemical Terminals of the MBPT. The MBPT has further requested for the approval of this Authority for recovery of Wharfage Compensation levied as per the agreement between MBPT and ONGC dated 28.01.2005 with retrospective effect.

6. In accordance with the consultative procedure prescribed, a copy of the MBPT proposal dated 28 February 2018 was forwarded to ONGC for its comments. The ONGC has furnished its comments on the proposal of MBPT. The comments of ONGC was forwarded to MBPT as feedback information. After reminders dated 08 May 2018 and 05 June 2018, the MBPT has responded to the comments of ONGC.

7. 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, both the MBPT and the ONGC have made their respective power point presentation. At the joint hearing, the MBPT and ONGC have made their submissions.

8. In the meanwhile, the MOS vide its letter dated 05 September 2018 has stated that the compensation charges are levied as per the Agreement entered into between MBPT and ONGC in 2005 and the ONGC was making payment of compensation charges to MBPT till 2013-14. Accordingly, the MOS has requested this Authority to resolve the matter as per the terms and conditions of the agreement entered between MBPT and ONGC.

9. 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

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

(i). The Agreement between ONGC and MBPT contains three distinctive but interrelated features – one, permission to lay two additional pipelines within the MBPT port limits and another to pay 50% of the wharfage rate to MBPT as per the Scale of Rates on per tonne of Crude Oil applicable from time to time and the third one, the applicable way leave fees for pipelines. As admitted by the ONGC, it has entered into this Agreement dated 28 January 2005 with the MBPT for the pipelines as per the terms of MBPT and make payments for the future on that basis, as directed by the Additional Secretary, Ministry of Petroleum and Natural Gas consequent to the Meeting chaired by him on 10 November 2004 after hearing both the parties, ONGC and MBPT.

(ii). The matter presented by the MBPT before this Authority for approval is the wharfage compensation payable by the ONGC to MBPT. The Wharfage compensation including Service Tax due from ONGC is reported at ₹.130.75 crores upto 30 June 2017. This amount does not include the interest amount of ₹.42.93 crores calculated upto 31 December 2017. For the matter regarding way leave fees, the MBPT has come up with a separate proposal subsequently, which is being dealt with in a separate tariff proceeding. Thus, the matter of way leave charges is not before this Authority for consideration now.

(iii). The ONGC has stated that the Wharfage Compensation charge is in the nature of royalty and contended that MBPT is not authorized to levy compensation on ONGC. During the proceedings of this case, the ONGC has also drawn a reference to an observation made by this Authority in the tariff order of September 2006 relating to the general revision of the Scale of Rates of MBPT that the Compensation charges levied by MBPT as a percentage of Wharfage is akin to

royalty if it is for allowing to do the business. In this regard, it is to state that the present exercise is undertaken to resolve the dispute between ONGC and MBPT as requested by the MOS and the reference drawn by ONGC is found to be no longer relevant.

(iv). It is necessary to examine whether this Authority has jurisdiction to resolve this issue. As has been brought out in later paragraphs, the issues involved are relating to use of port limits and wharfage on cargo not handled at the port facilities. It will definitely be of relevance to consider the argument of MBPT that as per the terms and conditions of Agreement entered between ONGC and MBPT, the ONGC has committed to pay to the MBPT wharfage compensation on the Crude Oil which will be imported into the port of Mumbai through the ONGC Pipelines and which is not exported through the MBPT Marine Oil Terminal, Jawhar Dweep and any other existing and further oil, gas or chemical Terminal of the MBPT. Under these circumstances, this Authority's Jurisdiction to resolve the matter relating to Wharfage Compensation charges is beyond any doubt.

It is relevant here to mention that representative bodies of the port users of the Chennai Container Terminal Private Limited (CCTPL) at the Chennai Port Trust (CHPT) represented to this Authority in the year 2004 for waiver of charges on containers which could not be cleared due to the workers strike at the CCTPL. In this connection, the MOS advised this Authority vide its letter dated 20 July 2004 to consider the representations of the user bodies on merits and pass speaking order. Accordingly, this Authority took up the matter based on the advice of the Government and resolved the issue vide order dated 07 October 2004.

(v). There is no dispute regarding using the seabed in the MBPT water. The ONGC agrees that 19.5 Km of each pipeline falls within the MBPT limits. The issue raised by the ONGC is that the MBPT cannot levy the Wharfage Compensation, since it does not have the approval of this Authority. The ONGC has withheld the Wharfage Compensation claimed by MBPT from the year 2013-14 for want of approval of this Authority. The ONGC is for adjudication of the dispute between ONGC and MBPT by this Authority.

(vi). The MBPT has sought to argue that Section 38 of the Major Port Trusts Act, 1963 entitles the port to prevent the goods from being landed or shipped upon any sea going vessel within the port otherwise than by using the facilities erected by the port. As argued by the MBPT, the Port has created such facilities and if the port grants permission despite its own facilities, it would be in accordance with the conditions as the Board may specify and that the conditions for laying pipelines have been specified in the Agreement dated 28 January 2005. The ONGC has countered this Agreement of MBPT that Section 38 of the said Act is applicable for Sea going Vessels for goods and passengers, whereas, the Crude Oil is transported from Mumbai High field to Uran Plant by pipelines and it is not brought to Port and MBPT has not created any facility for receipt of Crude Oil from offshore fields of ONGC. There is force in the argument of ONGC.

(vii). However, as pointed out by MBPT and as observed by the Ministry of Shipping in its letter dated 5 September 2018 addressed to this Authority, the compensation charges are levied as per the agreement entered into between MBPT and ONGC in year 2005 and the ONGC was making payment of compensation charges to MBPT till the year 2013-14. The ONGC is aggrieved that it signed the Agreement under duress and without full consent. But, the ONGC was not obliged to accept such Agreement if it did not want to. It is relevant here to recognize the fact that the intention of the MBPT to levy the Wharfage Compensation charge was known to the ONGC way back in 2003 itself, as when the ONGC approached MBPT in December 2003 for permission to replace some other pipelines, the MBPT had declined to accord permission and insisted for payment of Wharfage Compensation since 1978 for some other pipelines. Having signed the Agreement, the ONGC cannot, at this stage, argue that it signed the Agreement

under duress and without consent. Agreement has been made between both the parties who have intended to bind together to serve the interest of both the parties. When a binding agreement is not honored by one party to the Agreement by non-performance there is breach of Agreement. The other party is discharged from its obligation under the Agreement and it is entitled to rescind the Agreement which would affect the Oil industry. The MBPT, as a responsible Public Authority, has chosen not to rescind the Agreement.

(viii). Another issue brought out by the ONGC is that there is no business or traffic loss to MBPT since the facilities created by MBPT at Marine Oil Terminal at Jawahar Dweep remain occupied all the time and the MBPT does not need to be compensated for supply of Crude Oil by ONGC by pipelines. However, the average occupancy of Marine Oil Terminal at JD is 50% as per the statement of berth occupancy produced by MBPT. That being so, asking the MBPT not to claim compensation for permitting the ONGC to carry its cargo through pipelines within MBPT limits is unreasonable.

(ix). The Wharfage Compensation charge agreed between the parties has a cost implication to ONGC, as submitted by the ONGC. The ONGC has stated that it has no authority to recover wharfage compensation charges from Oil Marketing Companies and the ONGC requires approval of the Ministry of Petroleum and Natural Gas in the Government of India to pay the Wharfage Compensation charges to MBPT. However, this Authority cannot go into these issues. The matter regarding payment and quantum of wharfage compensation charges has already been mutually settled between the parties by the Agreement dated 28 January 2005.

(x). The MOS has requested this Authority to resolve the dispute as per the terms and conditions of the agreement dated 28 January 2005 entered between ONGC and MBPT. As brought out earlier, condition No.1 of the terms and conditions of the agreement dated 28 January 2005 stipulates that the ONGC shall pay to the MBPT a compensation at one half (½) of wharfage rate as applicable on the per tonne of crude oil which will be imported into the port of Mumbai through all or any of the pipelines and which is not exported through the MBPT Marine Oil Terminal Jawahar Dweep, through any other existing and future oil, gas or chemical terminals of the MBPT.

(xi). The MBPT has also requested to approve a condition that ONGC shall furnish all traffic throughput data for imported oil every year through the pipelines by the end of financial year as required by MBPT to enable the Traffic Manager, MBPT to raise the compensation bills inclusive of all associated charges and Government taxes and duties on crude oil and the ONGC to ensure that all such bills are fully paid within one month of receipt of MBPT bills. Since this proposed condition relates to the procedure for raising the bills by MBPT, this condition need not be approved by this Authority.

(xii). The MBPT has sought the approval of this Authority with retrospective effect for recovery of wharfage compensation as per the agreement between MBPT and ONGC dated 28 January 2005. This Authority does not ordinarily give retrospective effect to the order. But, in cases governed by special circumstances, it does require retrospective application of its order. In a case relating to an agreement between New Mangalore Port Trust and the Kudremukh Iron Ore Company Ltd., on the advice of Ministry of Law, the (then) Ministry of Surface Transport had vide its Communication No. PR-14011/5197-P4 dated 16 March 1998 advised this Authority to give retrospective effect. In the circumstances, the proposal of the MBPT for recovery of wharfage compensation leviable as per the agreement between ONGC and MBPT dated 28 January 2005 is approved with retrospective effect.

11. In the result, and for the reasons given above, and based on a collective application of mind, this Authority accords approval for insertion of the following provision as clause 3.4 chapter – III of the Scale of Rates of MBPT, with retrospective effect from the date the wharfage compensation is due to MBPT as per the Agreement dated 28 January 2005:

> **"3.4. WHARFAGE COMPENSATION PAYABLE BY ONGC IN TERMS OF AGREEMENT dated 28.01.2005 SIGEND BETWEEN MBPT AND ONGC:**
> ONGC shall pay to the Mumbai Port Trust a compensation at one half (1/2) of wharfage rate as applicable on the per tonne of crude oil which will be imported into the Port of Mumbai through all or any of these ONGC pipelines and which will not be exported through the MBPT Marine Oil Terminal, Jawahar Dweep through any other existing and future Oil, Gas or Chemical Terminals of the MBPT."

(T.S. Balasubramanian)
Member (Finance)

SUMMARY OF THE COMMENTS RECEIVED FROM THE OIL AND NATURAL GAS CORPORATION LIMITED (ONGC) AND ARGUMENTS MADE IN THIS CASE DURING THE JOINT HEARING BEFORE THE AUTHORITY.

TAMP/18/2018-MBPT	**:**	**Proposal received from the Mumbai Port Trust (MBPT) for prescription of wharfage compensation payable by Oil and Natural Gas Corporation Limited (ONGC) to MBPT.**

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A summary of the comments furnished by Oil and Natural Gas Corporation Limited (ONGC) and the comments of MBPT thereon is tabulated below:

Sl. No	Submissions of MBPT in its letter dated 28.02.18	Reply of ONGC	Reply furnished by MBPT
1.	ONGC in December 2003 had approached MBPT seeking grant of permission for laying two subsea and onshore pipelines, one each for transportation of oil and for gas from Mumbai High field to Urban Terminal. Approximately 22 kms. of each pipeline falls within the Port limit. The request of ONGC was examined and deliberated by the Board vide TR No. 116 dated 27.10.2004, and finally the Board by TR 124 dated 23.11.2004 approved the following terms: (a). ONGC to pay all the principal amounts as per the discussion at the meeting on 10.11.2004; (b). ONGC to sign agreements for the pipelines including the terms for payment of way leave fees and compensation at ½ wharfage on the crude imported through the pipelines and not exported through Marine Oil Terminal and other standard terms whereupon they permitted to lay the pipelines ; and	It is admitted that ONGC in December 2003 had approached Mumbai Port Trust seeking grant of permission for laying two subsea and onshore pipelines, one each for transportation of Crude Oil and for Natural gas from Mumbai High field to Uran Plant. However, it is stated that approximately, 19.5 kms of each pipelines fall within the Port limit. Infact, it is submitted that the Pipelines for the transportation of Crude oil and Natural Gas from Mumbai offshore fields to Uran Plant were laid on the sea bed (subsea) and no portion of these pipelines are on land. Therefore, the contention of MbPT are fictitious and based on surmises and hence should not be given cognizance to. While granting permission for laying of above pipelines, MbPT imposed certain illegal terms and condition which included payment of Way Leave Fee for pipelines and	Section 38 of the Major Port Trust Act entitles the Port to prevent the goods from being landed or shipped within the Port otherwise than by using the facilities erected by the Port. The Port has created such facilities. If Port Trust grants permission despite its own facilities, it would be in accordance with the conditions as the Board may specify. Thus, it is incorrect to state that the contention of MbPT are fictitious as is evident from Section 38 of MPT Act. Further, in a meeting held by the Additional Secretary, Ministry of Petroleum & Natural Gas on the issue of non-payment of charges by ONGC to MbPT on 10th November 2004, Additional Secretary, MoP&NG, after hearing both the sides had observed that the imposition of various charges and the rates were within the scope of MbPT's statute. He agreed with the contention of MbPT that the justification of the rates and the levy could not be questioned by a user. On the issue of compensation, in the meeting held in the chamber of secretary (Shipping) at 11.00 am on 20.10.2004, then the Chairman of ONGC had agreed to accept a decision taken in the matter either by Committee of Secretaries, Committees on Disputes or Statutory Authority. He also stated

	(c). The issue of interest on the arrears for the earlier two pipelines to be resolved through further discussions.	Wharfage Compensation on crude oil imported from offshore fields to Uran Plant and not exported from facilities of port. It is pertinent to mention that the said Crude oil is not imported from facilities of port i.e. from marine oil terminal at Jawahar Deep. Crude oil is received directly from Offshore fields of ONGC to Uran Plant without passing through port facilities. ONGC has been raising objections to levying of Wharfage Compensation and Way Leave Charges since 1978 & accordingly, in light thereof no payment was made by ONGC to MbPT for Way Leave Fee nor Wharfage Compensation till 1989. In the backdrop of the dispute, it is submitted that the dispute on payment of Wharfage Compensation & Way Leave Charges were discussed in 03 nos. of inter-ministerial meetings under the Chairmanship of JS [Ports] held on 11.08.1987, 12.1.1989 and 20.04.1992. In the 2nd meeting held on 12.10.1989, it was decided that ONGC should make provisional payment of INR 10.0 Crore to MbPT and accordingly the payment was made by ONGC on 19.10.1989. Accordingly, ONGC again approached MbPT on 22.12.2003 for permission of laying of Mumbai Uran Trunk Crude oil and Gas pipelines as replacement of Bombay	that the decision which the M/o Shipping and M/o P&NG take on the issues would also be acceptable to ONGC. (copy of the minutes is enclosed). Thus, levy of compensation was already agreed upon by ONGC. Additional Secretary, Ministry of Petroleum & Natural Gas had given the following dispensation to the issues raised in the matter which are reproduced below for perusal: a) ONGC would settle the entire principle arrears to MbPT forthwith. b) The levy of interest would be waived by MbPT. c) ONGC would enter into an agreement with MbPT for all the old and new pipelines at the terms as per the MbPT Regulations and make payments for the future on that basis. d) MbPT would immediately grant permission to ONGC to lay the pipeline. e) In future, ONGC will remit to MbPT in advance a minimum of 50% of the total demand, expected for that year and the balance within one month of the end of FY, subject to bills being received by them from MbPT before the end of FY. In view of above directives, MbPT has levy wharfage compensation and way leave and enter the agreement with ONGC. Thus the issues raised by ONGC may please be viewed keeping in mind the legal mentioned above and facts on record. (The Copy of minutes of the meeting is furnished by MBPT.)

		Uran Truck crude oil & gas pipelines (Laid in the year 1978). MbPT declined to accord permission for laying of the pipeline and insisted for payment of Wharfage Compensation and Way Leave Charges since 1978 and asked ONGC to furnish year-wise figure for crude oil supplied to work out Wharfage Compensation. The requisite data was furnished by ONGC in July 2004 in right earnest and MbPT lodged a claim of INR 584.54 Crore. The breakup of the claim is as follows. i) Wharfage Compensation from 1978-79 to 2003-04 = INR 221.0 Crores. ii) Interest on above @ 18% per annum – INR 321.6 Crore. iii) Way leave fee- INR 15.96 Crore. iv) Interest on way leave – INR 24.12 Crore. v) Misc. Charges = INR 1.7 Crore Total-= INR 584.54 Crore. The dispute of payment of Wharfage Compensation and Way Leave Fee was again discussed in the meeting held on 20.10.2004 in the chamber of Secretary (Shipping) wherein ONGC again contested the applicability and levying of Wharfage Compensation and steep revision of Way Leave Charges. ONGC	

		suggested that charges must conform either to the prevalent practice/ existing laws or to a fair and equitable settlement between two commercial entities. The Secretary (Shipping) asked ONGC to pay INR 100.00 Crore against adjustment of arrears to MbPT and directed JS, MoP&NG to resolve the dispute within 30 days. ONGC made the payment of INR 100.00 crore to MbPT on the very next day i.e. on 21.10.2004. In this regard another meeting was held on 10.11.2004 which was chaired by Additional Secretary, MoP&NG. ONGC again questioned the applicability of Wharfage Compensation and rational behind the quinquennially steep revision of Way Leave Charges. ONGC clarified its intent to pay the reasonable charges considered appropriate by MoP&NG. ONGC also made it clear that it was not prepared to pay the interest charge which has been levied at a very high rate of 18% per annum. Addl. Secretary, after hearing both parties issued the following directions:- i) ONGC would settle the entire principal arrears to MbPT ii) The levy of interest would be waived by MbPT. ONGC would enter into an agreement with MbPT for all the old and new pipelines at the terms as per the MbPT regulations and make	

		payment for the future on that basis. ONGC made the payment of INR 127.82 Crores to MbPT on 24.11.2004, thus total payment made works out to be INR 237.82 Crore amounting to basic component of Wharfage Compensation and Way Leave Charge.	
2.	Accordingly, MBPT entered into agreement with ONGC on 28.01.2005 with terms and conditions agreed upon mutually, wherein ONGC was permitted to lay two additional pipelines within the MBPT port limits on land as well as in the sea, subject to terms and conditions and payments to be made to MBPT towards way-leave fees, wharfage compensation (as per section 3.2.1 (I) of scale of rates) and all other associated charges as applicable, as amended by MBPT from time to time and Govt. taxes and duties, cesses and levies in connection with the same as may be levied by State / Central Government organisations or any other Statutory Authority from time to time are fully paid every year within the stipulated period.	MbPT insisted ONGC to sign one sided agreement before granting permission for laying of pipelines on certain terms and conditions and some conditions were not agreeable to ONGC. However, on 28.01.2005 an agreement was singed between ONGC and MbPT which was entered under compelling circumstances as pipeline laying barges of LSTK contractor were on standby and ONGC's letter of disagreement signed under duress is without free consent. The contract is not a contract in true sense as it does not have clauses for duration, exit, arbitration, etc. It's an 18 page document with relevant governing documents made as part of the agreement. ONGC is making payment to MbPT as per the agreement without receiving any services for levy of compensation for crude oil supplied to local refinery through ONGC's own pipelines (for which way leave fees is being paid regularly) and marine tankers loaded at	An Agreement was entered into between MbPT and ONGC on 28.1.2005 as per the directives given by the Additional Secretary, Ministry of Petroleum & Natural Gas given in the meeting held on 10.11.2004, which are reproduced below: a) ONGC would settle the entire principle arrears to MbPT forthwith. b) The levy of interest would be waived by MbPT. **c) <u>ONGC would enter into an agreement with MbPT for all the old and new pipelines at the *terms as per the MbPT Regulations* and make payments for the future on that basis.</u>** d) MbPT would immediately grant permission to ONGC to lay the pipeline. e) In future, ONGC will remit to MbPT in advance a minimum of 50% of the total demand, expected for that year and the balance within one month of the end of FY, subject to bills being received by them from MbPT before the end of FY. In view of above point (c), it is incorrect to state by ONGC that MbPT insisted/duress ONGC to sign one sided agreement before granting permission for laying of pipelines on certain terms & conditions and it is a afterthought.

		JNPT. The levy Compensation of 50% of wharfage charges was unilaterally fixed by MbPT, whereas Wharfage charges which is tariff item is fixed by Tariff Authority on Major Ports (TAMP) as per MPT Act. The said Wharfage compensation levied by MbPT doesn't have sanction of TAMP, hence illegal and cannot be levied by MbPT. In the year 2006, MbPT had submitted a proposal to TAMP for general revision of its scale of rates. Pursuant to the proposal, TAMP issued notice to all port user including ONGC seeking their comments. A joint hearing followed on June 29, 2006 wherein ONGC made its submission about levy of compensation, exorbitant and unilateral increase in way leave charges and continuation of way leave charges for redundant pipelines. Subsequently, TAMP passed an order on September 28, 2006(Case no. TAMP/57/2005-MbPT) on the proposal submitted by MbPT for revision of Scale of Rate. The above order was published in Gazette of India Extraordinary (Part-III, Section-4) on December 1, 2006, refer gazette no 178. In above order while referring the dispute between ONGC and MbPT on the issue of levy of Compensation and substantial	It is very vague argument that an agreement has been signed under duress and clearing an afterthought to avoid liability. Wharfage Compensation is payable by ONGC to MbPT as per condition No.3 of Terms and Conditions (Financial) of the Agreement dated 28.01.2005.

		increase in way leave charge, TAMP observed inter alia vide para no.9, sub section XXXIV (O)- page 59 "That compensation charges is levied by MbPT as a percentage of Wharfage rate fixed by this Authority though it is not clear whether any service is provided by MbPT against levy of the charges. If compensation is levied for allowing right to do the business, it may be akin to royalty, in which case a specific approval from Govt. is necessary. This Authority has already pointed out to the Ministry of Shipping, Road Transport and High Ways (MSRTH) to examine the issue to ascertain whether the relevant payment would not be a tariff item to be regulated by TAMP". "As regards way leave charges is concerned, it is a fee for use of property of the port and the property is within port limit. Since section 49 of MPT Act empowering this Authority alone to fix charges, the decision arrived at in the inter-ministerial meeting may have to be put in a legal framework so as to meet the provisions reported above. This position has also been brought to the notice of the Government".	
3.	Wharfage compensation was payable by ONGC in terms of condition No. 3 of Terms and conditions and Condition No. 1 of terms and conditions (Financial) of the agreement dated 28.01.2005	Statement of facts	ONGC has accepted these facts. However, ONGC has to honor the terms and conditions signed by them, in the agreement dated 28.01.2005 and accordingly make a payment.

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<tr>
<td>4.</td>
<td>Non-payment of wharfage compensation by ONGC –

(a). Wharfage compensation towards cargo/ oil handled through ONGC pipeline was paid by ONGC towards provisional bill for F.Y. 2013-14 and final bill for F.Y. 2012-13.

(b). M/s. ONGC vide their letter No. URAN/PMG/MBPT/ Legal/2014 dated 12.12.2014 addressed to FA&CAO had requested to provide copy of TAMP's approval for applicability of way leave charges and wharfage compensation being collected from ONGC as per clauses 2 & 3 of terms and conditions of agreement dated 28.01.2005 between MBPT and ONGC. On this pretext, ONGC withheld the payment of wharfage compensation on final bill for the year 2013-14 and provisional bill for the year 2014-15 and no payment have been made thereafter though regular bills/ demands were raised therefor.

(c). FA&CAO had issued a reply to ONGC vide letter No. FA/OED-L/3(04)/MUT/PT (vi & vii)/355 dated 5.8.2014 informing that wharfage rates are approved by TAMP and notified in the gazette. He, therefore, requested to release payment of MBPT dues.

(d). In the meeting held with ONGC on 12.01.2015 by Traffic and Finance Department officials, it was contended by ONGC that MBPT has imposed unreasonable wharfage compensation</td>
<td>It is clarified that ONGC had been making payment of Way Leave Charges and Wharfage Compensation as per the said alleged contract. ONGC has paid INR 629.89 cores to MbPT upto the year 2013-14 Under protest and pursued for amicable resolution of the dispute. In the meantime, ONGC initiated the proposal for adjudication of the dispute by TAMP in the year 2006 itself through discussion with MbPT officials at Mumbai and sought the intervention of MoP&NG. Accordingly, based on the ruling of TAMP, CMD ONGC had written 08 Nos. of letters to MoP&NG for referring the dispute to TAMP for resolution of the dispute. (5.12.2006, 02.01.2007, 01.02.2014, 03.02.2016, and 05.12.2016). Further MoP&NG in turn had written 03 Nos. of letters to MoS for referring the dispute to TAMP or the resolution of pending issues. (29.11.2010, 08,03,2011 and 22.08.2014).

It is incorrect to say that ONGC is not responding positively for the resolution of the dispute. ONGC has always co-operated with MbPT for amicable solution of the dispute as per the ruling of TAMP, but MbPT has not given any cognizance to TAMP ruling and repeatedly citing about signing of the said agreement</td>
<td>As per Clause 2 and 3 of the Terms and Conditions of the Agreement entered into with ONGC on 28.01.2005, ONGC has to make payments of way leave fees, land rentals and compensation in lieu of wharfage. MbPT periodically raises bills for recovery of above said charges and also pays service tax on these bills in anticipation of payment. However, since the year 2013, ONGC started disputing the bills raised on them and stopped making payments. The amounts due from ONGC are shown below:-
<table>
<tr><td></td><td></td><td>(in ₹.)</td></tr>
<tr><td>(i)</td><td>Wharfage compensation upto 31.10.2016</td><td>92,48,22,190.00</td></tr>
<tr><td>(ii)</td><td>Interest on Wharfage Compensation upto 31.10.2016</td><td>23,93,24,987.00</td></tr>
<tr><td>(iii)</td><td>Licence fees / Warehousing charges and interest thereon upto 31.10.2016</td><td>70,44,500.00</td></tr>
<tr><td>(iv)</td><td>Interest on delayed payment of Storage Fees and Licence Fees.</td><td>43,66,112.00</td></tr>
<tr><td>(v)</td><td>Way Leave Fees upto 01.05.2016 including Service Tax and interest</td><td>1,35,51,80,117.19</td></tr>
<tr><td></td><td>Total:</td><td>253,07,37,906.19</td></tr>
</table>
Above pending payment has not been paid by ONGC. ONGC has to honor agreement signed by them dated 28.01.2005 and accordingly make payment.</td>
</tr>
</table>

	and way leave charges for its pipeline passing through MBPT limits. The ONGC officials stated that the issue has been taken up earlier by their Ministry with the Ministry of Shipping for referring the dispute to the Tariff Authority for Major Ports (TAMP) for adjudication vide OM of even Nos. dated 29.11.2010 and 22.08.2014. However, it appears that no action has been taken till date. (e). Since ONGC is not responding positively to the issue of payment of port trust including service tax (already paid by MBPT for such billing to ONGC), the matter was referred to Secretary, Ministry of Shipping and Secretary, Ministry of Revenue, Govt. of India for resolving this pending dispute. It was felt that if ONGC fails to comply with any of its terms and conditions, MBPT reserves the right to revoke the permission granted to ONGC by issuance of suitable notice.	signed under duress by ONGC. The Under Secretary, MoS vide letter no. PR-15020/01/2100-PG dated 27.07.2014 had directed Chairperson, MbPT to mutually settle the matter with ONGC (Annex-I). ONGC officials had attended a number of meetings with Financial Advisor & Chief Accounts Officer of MbPT for amicable resolution of the long pending disputes. A meeting was also held on 13.08.2013 in which certain issues including the dispute of Way Leave Charges and Wharfage Charges were also discussed. MbPT took the stand that after signing of agreement, the dispute is not open for review (Annex-III) which is not acceptable in law. As brought out above, it is reiterated that the said agreement was signed under duress and is not a contract in true sense, and TAMP ruling was made subsequent to signing of the agreement.	
5.	**Non-payment of dues towards service tax –** ONGC had disputed payment of service tax on wharfage compensation. With the enactment of the Finance Act 2010, the definition of port services had undergone certain changes and port service was defined as any service rendered within a port or other port in any manner. In this regard, a lot of correspondence was exchanged with ONGC for payment of service tax as per above.	Statement of facts.	ONGC has accepted these facts. Accordingly, ONGC should make payments towards outstanding dues on account of wharfage compensation alongwith accrued interest.

	ONGC vide letter dated 19.06.2013 had informed that levy of Service tax on compensation in lieu of wharfage is applicable only with effect from 01.07.2012. Hence, they did not make payment of service tax of ₹.2.72 crores claimed in the bills for F.Y 2011-12 and also Service tax of ₹0.37 crores claimed for the period from April 2012 to June 2012 in the advance bills for FY 2012-13. ONGC were requested vide letters dated 14.10.2013 and 14.11.2013 to settle outstanding bills. The matter was also pursued with them invarious meetings. However, ONGC have maintained that service tax is applicable w.e.f. 01.07.2012 after declaration of negative list by Service Tax Authority. MBPT has paid service tax on wharfage compensation against ONGC w.e.f. 01.07.2010. ONGC has paid service tax only w.e.f. 01.07.2012 on wharfage compensation. However, no service tax has been paid by ONGC for wharfage compensation on final bill for the year 2013-14 and provisional bill for the year 2014-15 and also no payments have been made by ONGC thereafter though regular bills/ demands were raised therefor, and Mumbai Port Trust had to remit service tax amounting to ₹.18,93,70,172/- to the service tax authorities till 30.06.2017.		
6.	An area was occupied by ONCG at 12VD as per TR No. 678 dated 16.05.72 which was later vacated by them on 16.06.2009. An	This issue is not to be linked to the dispute of Way Leave and Wharfage Charges. Moreover, issue has not	Notices for settlement of outstanding bill towards Licence (Storage) fees for area occupied at 12VD till 16.06.2009, were issued to ONGC vide No.

	amount of ₹.77,89,993/- is outstanding towards license fees for occupation of above said area and also interest due for delay in payment of said charges. The statement of these charges is furnished.	been referred to TAMP for adjudication.	(i)TM/OSC/Rental /750 dated 24.04.2018. (ii)TM/OSC/Rental/1105 dated 16.05.2018. However ONGC have not settled these outstanding till date.
7.	Meeting was held with ONGC officials on 08.08.2016 in Board Room by Chairman, when it was decided that matter will be referred to Ministry of Shipping. A letter dated 25.08.2016 was sent to Secretary, Ministry of Shipping requesting him to intervene in the matter for its early solution.	Statement of facts.	No Comments
8.	Secretary, MoS vide d.o. No. PD-11020/47/2014-MBPT dated. 02.09.2016 informed Chairman, MBPT that a meeting may be organized with senior official of ONGC and TAMP officials and all efforts be made to resolve this long pending dispute amicably for mutual benefit of both the Organisations	MoS had advised MbPT to organise a meeting with Senior Officials of ONGC and TAMP officials but no meeting has been called by MbPT till date.	A meeting was held between Chairman, MbPT and Member Finance, TAMP on 4.11.2016 wherein TAMP agreed to give written clarification on a reference with regards to issues of way leave fees and compensation in lieu of wharfage. As a sequel, a letter was addressed to Member Finance, TAMP and Managing Director, IPA on 8.11.2016. (copy of letter to IPA enclosed).
9.	By letter dated 06.03.2017 Chairman, MBPT informed Secretary, MoS, Govt. of India regarding the meeting held between Member, Finance, TAMP & Chairman, MBPT on 04.11.2016, alongwith clarification given by TAMP, by letter dated 29.11.2016 and views of MBPT.	No comments.	No comments
10.	Head Marketing, ONGC vide letter No. URAN/PMMG/MBPT/24(3) / 2017/11989 dated 31.05.2017 informed the quantity of crude oil sold to M/s. BPCL and M/s. HPCL through pipelines and loaded at JNPT and requested to provide TAMP's approval or the ruling / remarks of the Ministry of Shipping for early resolution of the said dispute.	Statement of facts.	No comments

11.	On the basis of the tonnage furnished by Head Marketing, ONGC, bills were raised to ONGC on 30.06.2017. However, these bills are also not settled by ONGC. The details of outstanding dues on account of wharfage compensation against ONGC is furnished.	Statement submitted by MbPT is for Wharfage compensation only and does not include outstanding for Way Leave Charges. Payment of Wharfage compensation and Way Leave charges are withheld for want of approval of TAMP which has been communicated to MbPT through numerous correspondence. Statement of withheld payment for Way Leave Charges and Wharfage Compensation is furnished at Annex-III	A proposal for way leave charges will be submitted separately. However, ONGC has to make a payment as per condition No.3 of Terms and Conditions of the Agreement dated 28.01.2005
12.	During the meeting held in Dy. Chairman's chamber on 05.01.2018, above issues were discussed in the presence of officials of TAMP and Accounts department, Traffic Department and Estate Division of MBPT	No comments.	No Comment
13.	A proposal was, therefore, submitted to Board seeking approval of TAMP to the rates for recovery of wharfage compensation levied as per the agreement between Mumbai Port Trust and Oil & Natural Gas Commission dated 28.01.2005 with retrospective effect. The proposal has been approved by Board vide TR No. 198 dated 09.01.2018	No comments.	ONGC raised following two issues on the basis of observation made by TAMP in paragraph No.9(xxxiv)(o) of the Tariff Order dated 28.09.2006. i. Levy of Wharfage Compensation is akin to royalty and hence require specific approval of the Ministry; and ii. Way leave charges are to be regulated by TAMP. In view of above, proposal was therefore submitted to Board seeking approval of TAMP to the rates for recovery of wharfage compensation levied as per the agreement between MbPT and ONGC dated 28/01/2005 with retrospective effect
14.	Accordingly, the MBPT has sought approval of TAMP to insert the following provision at clause 3.4 in Chapter – III of SOR, for recovery of wharfage compensation levied as per the agreement between Mumbai Port	<u>WHARFAGE COMPENSATION</u> Allocation of Mumbai High Crude oil to PSU's is done by MoP&NG and ONGC has no role or authority in the allocation. ONGC follows the directive of	

	Trust and ONGC dated 28.01.2005 with retrospective effect as under: **"3.4 WHARFAGE COMPENSATION PAYABLE BY ONGC IN TERMS OR AGREEMENT dated 28.01.2005 SIGEND BETWEEN MBPT AND ONGC.** (a). ONGC shall furnish all Traffic throughout data for imported oil every year through the pipelines by the end of financial year as required by MBPT to enable the Traffic Manager, MBPT to prepare and raise the compensation bills inclusive of all associated charges and Government taxes and duties on crude oil. ONGC to ensure that all such bills are fully paid within one month of receipt of MBPT bills. (b). ONGC shall pay to the Mumbai Port Trust a compensation at one half (1/2) of wharfage rate as applicable on the per tonne of crude oil which will be imported into the Port of Mumbai through all or any of these ONGC pipelines and which not be exported through the MBPT Marine Oil Terminal, Jawahar Dweep through any other existing and future Oil, Gas or Chemical Terminals of the MBPT.**"**	the MoP&NG and the said distribution/allocation of Mumbai High Crude Oil keeps on changing every year. PSU's like M/s. IOC and MRPL offtake allocated Crude Oil through marine tankers only as there is no refinery by these PSU's in Mumbai. M/s. BPCL and HCPL receive certain % of refineries through pipelines and remaining % to their costal refineries through marine tankers. The % for local and coastal refineries keep on changing every year by these PSU's. Payment of Wharfage Compensation/charges is a huge loss to ONGC as this component is not a part of crude oil pricing which is being paid by OMC's to ONGC. Moreover, ONGC has no authority to charge/recover Wharfage Compensation from OMC's and approval of MoP&NG will be required if it is to be paid to MbPT. The details of MoP&NG's allocations and intake by PSU's is furnished at Annex-IV which is self-explanatory for year wise change in allocation and offtake by PSUs. The facilities created by MbPT at Marine Oil Terminal at Jawahar Deep is common facilities used by all PSUs. There is no business or Traffic loss to MbPT for supply of Crude Oil to refineries by ONGC as per the directive of MoP&NG.	The permission granted by MbPT has resulted huge savings to ONGC. Without the permission ONGC would have required to re-route the pipelines outside the Port Limits which would have cost them nearly Rs.600 crores only for construction. This would have resulting in additional 40 Kms. of route length of pipelines, covering 20 Kms. through sea and 20 Kms. on land. In addition, ONGC would have required to spend money on land acquisition, litigation and consequential delay. By these pipelines ONGC has saved money to the tune of Rs.1572 crores on account of wharfage and vessel related charges. Thus, ONGC has saved huge amount by permitting MbPT to construct the pipelines within the Port Limits. As explained above ONGC has saved huge amount on account of wharfage and vessel related charges and construction of pipelines within port limits.

		Needless to mention that marine oil tanker facilities remain occupied all the time and hence there is no loss to MbPT and no Wharfage compensation needs to be paid. No service is provided by MbPT for supply of Crude Oil to refineries by pipeline and hence the demand for Compensation is illegal and without any authority from the government. It is worth to note that Crude oil from Offshore fields is first received at Uran Plant and after due processing and quality assurance, is subsequently supplied to local refineries. Section 38 of MTP Act does not apply to ONGC as Crude oil is not brought to port and MbPT has not created any facility for receipt of Crude oil from Offshore fields of ONGC. Section 38 is applicable for sea-going vessels for goods and passengers and it does not authorize MbPT to charge compensation from users of the port facilities. Hence, the application of Section 38 of MTP Act in the case of ONGC is illegal and unwarranted. <u>WAY LEAVE CAHRGES</u> ONGC pipelines are laid under the sea bed and are far off from the shores of Mumbai. Offshore fields to Uran Plant pipeline are spread over a length of approx.. 19.5 Kms from the shore and only a small portion of pipeline	A statement of Berth occupancy of Marine Oil Terminal at Jawahar Dweep (JD) is enclosed herewith. It is seen that the average occupancy of the berth at JD is 50%. However, contention of ONGC that there is no loss to MbPT is incorrect. Way Leave Fees from 2004 were as agreed between MbPT and ONGC vide Agreement dated 28.01.2005. However, the rates for way leave were based on Ready Reckoner for the year 2004. As per Board's policy for way leave permissions, way leave fees is charged at full current letting rate for overground pipelines and at 50% for underground pipelines. Further, 60% of above rate is

		passes nearby the shoreline of Mumbai (Uran Plant landfall portion of pipeline). Ready Reckoner rates meant for the mainland of Mumbai had been used for fixing Way leave charges and there is exorbitant increase in way leave charges. Pipelines laid on sea bed are considered as laid on land and are charged at 60% of ready reckoner rates. It is stated that ONGC pipelines are laid on the seabed and far off from operational areas of the port. Facilities creation or other developmental activities of the port are not affected by ONGC pipelines. MbPT was charging nominal way leave for these pipelines till July- 2004 and increased substantially from August 2004. Details of Way Leave Charges are furnished at Annex-V. Provision of Policy Guidelines for Land Management by Major Ports does not apply to ONGC pipelines as these pipelines are laid on sea based and no land is occupied by these pipelines.	charged for pipelines in undeveloped/ no-development zone/ water areas. Thus, MbPT is charging 30% of rates (60% of 50%) worked out as per ready reckoner and not 60% of ready reckoner rates as contended by ONGC.
15	TAMP's approval is requested to the rates for recovery of wharfage compensation levied as per the agreement between Mumbai Port Trust and Oil & Natural Gas Commission dated 28.01.2005 with retrospective effect as proposed in para 14 above.	It is submitted that: 1. Nominal Way leave charges should be charged for the pipelines as per the practice followed till July-2004. 2. Wharfage compensation is akin to royalty and port is not authorized to levy	Based on the above facts the proposal of MbPT may be accepted in toto.

		compensation from ONGC. Moreover, ONGC will require authorization from MoP&NG to charge levy of compensation from OMC's if it is to be paid to port.	
			Considering the above points and the submissions made by ONGC and on the basis of observation made by TAMP in paragraph No.9(xxxiv) (o) of the Tariff Order dated 28.09.2006, a proposal for recovery of wharfage compensation levied as per agreement between MbPT and ONGC dated 28.1.2005 with retrospective effect has been submitted for approval of TAMP. It is requested for approval to the rates for recovery of wharfage compensation levied as per the agreement between Mumbai Port Trust and Oil & Natural Gas Commission dated 28/01/2005 with retrospective effect as proposed.

2. A joint hearing on the case in reference was held on 20 April 2018 at the office of the Authority in Mumbai. At the joint hearing, both the MBPT and the ONGC have made their respective power point presentation. At the joint hearing, the MBPT and ONGC have made the following submissions:

Mumbai Port Trust (MBPT):

(i). MBPT & ONGC signed an Agreement on 28 January 2005. Based on the Agreement provisions, bills were raised on ONGC on account of wharfage compensation. ONGC made payment of wharfage compensation till 2013. It also paid arrears of ₹.227/- crores from 1989 to 2005.

(ii). Section 38 of MPT Act entitles the port to prevent the goods from being landed or shipped within the port otherwise than by using the facilities created by the port. Since the port has created such facilities and if the port grants permission despite its own facilities, it would be in accordance of the condition as the Board may specify.

(iii). The logic behind granting 50% discount is on the basis of Section 50B of MPT Act, which stipulates when a vessel enters a port but does not discharge or take in any cargo or passengers therein, the vessel shall be charged with a port-due at a rate to be determined by the Authority and not exceeding half the rate with which she would otherwise be chargeable.

(iv). The outstanding amount of wharfage compensation upto 31.03.2018 and the interest thereon upto 31.12.2017 aggregates to ₹173.74 crores.

(v). MBPT has held several meetings with ONGC on the matter. ONGC insists for specific approval of TAMP/ Ministry. On being referred to Ministry, the Ministry has

directed MBPT to resolve the issue amicably with ONGC. Hence, we have submitted a proposal to TAMP on 01.03.2018.

Oil & Natural Gas Corporation Limited (ONGC)

(i). We have two pending issues with MBPT viz., wharfage compensation and way leave. Since the present proposal of MBPT is with regard to wharfage compensation, we restrict our discussion to the same.

(ii). ONGC has laid pipelines for crude oil evacuation from Mumbai High to Uran Plant since 1978. Approximately, 19.5 kms of these pipelines pass through MBPT limits.

(iii). While granting permission to lay pipelines, MBPT imposed some conditions for payment of wharfage compensation (for crude oil imported through port limit and not exported from port facilities) and way leave for pipelines.

(iv). ONGC objected to the payment since beginning and did not make any payment till 1989. Thereafter, based on the discussions in inter-ministerial meetings, ONGC paid ₹.10 crores to ONGC in October 1989.

(v). When ONGC again approached MBPT for permission to replace old pipelines and lay new pipelines, MBPT declined and asked ONGC to clear past dues since 1978 amounting to ₹.584.54 crores. This amount includes wharfage compensation from 1978-79 to 2003-04 of ₹.221/- crores, way leave charges of ₹.15.96 crores, interest @ 18% pa at ₹.345.72 crores, miscellaneous charges at ₹1.7 crores.

(vi). At the Ministry of Shipping's behest ONGC paid ₹.100 crores to MBPT in October 2004. Thereafter, ONGC has paid ₹.127.82 crores in November 2004.

(vii). The Agreement entered by ONGC with MBPT in 2005 was signed by ONGC under compelling conditions. Levy of 50% wharfage charges was unilaterally fixed by MBPT, whereas it had to be fixed by TAMP as per MPT Act.

(viii). Payment has been made to MBPT without receiving any service from MBPT. The pipelines are ONGC's own pipelines and are used for supply of crude oil to local refinery and marine tankers loaded at JNPT. Way leave charges are paid for these pipelines.

(ix). In the Order passed by TAMP in 2006 while dealing with the general revision proposal of MBPT, TAMP has observed that it is not clear whether any service is provided by MBPT against levy of charges and if compensation is levied for allowing right to do business, it may be akin to royalty, where specific approval of the Government is necessary. With regard to way leave, TAMP has observed that MPT Act empowers TAMP alone to fix charges.

(x). Based on the said ruling, ONGC approached Petroleum Ministry. Petroleum Ministry has also written to Ministry of Shipping.

(xi). Though ONGC desires to settle the matter amicably, MBPT has not given any cognizance to TAMP Order and has repeatedly cited the provisions of the Agreement. MBPT has taken the stand that after signing of agreement, dispute is not open for review and that TAMP Order is subsequent to signing of Agreement.

(xii). In view of this stand taken by MBPT, ONGC decided to withhold payment of wharfage compensation and way leave after 2013-14.

(xiii) Payment of Wharfage compensation is a huge loss to ONGC as this component is not a part of crude oil pricing which is being paid to ONGC by PSU's. We have paid more than ₹.400 crores to MBPT. ONGC has no authority to recover the compensation from PSU's. ONGC is duty bound to follow Petroleum Ministry's

allocation and supply of crude oil to PSU's and compensation payment is additional burden to ONGC. We only charge transportation cost of crude oil through pipelines.

(xiv). Port is not rendering any service. Port's facility is not used. The cargo is not handled at any of the facility of MBPT. MBPT has not created any facility for receipt of crude oil. There is no loss to MBPT. Therefore, the question of application of Section 38 of the MPT Act does not arise. Section 38 does not authorize MBPT to charge compensation from users of the port facilities. Application of Section 38 of MPT Act in the case of ONGC is illegal and unwarranted.

Mumbai Port Trust (MBPT):

(i). Normally we stop service if payment is not made. ONGC being a Government entity, arrangement was concluded by an agreement in 2005. All the issues raised by ONGC now have been deliberated at that relevant point of time. Signatories to the agreement are top people. It is not appropriate now to discuss the legitimacy of clauses of Agreement.

(ii). Major activity of BPCL & COPT is happening through MOU in Cochin Port Trust.

(iii). Allocation of crude oil and collection of money from refineries have to be sorted out by ONGC with their Ministry.

(iv). MBPT is having facility. Crude oil is bypassing our facilities. So, we levy compensation.

(v). Proposal for fixing way leave charges to be levied on pipelines is under process and will be submitted separately.

Oil & Natural Gas Corporation Limited (ONGC)

(i). We will follow the ruling of TAMP. Port is not providing any facility or service. Why should we levy compensation?

Mumbai Port Trust (MBPT):

(i). It is not that our berths are full always.

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