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Tariff Authority for Major Ports

G.No.453 **New Delhi,** **8 October 2021**

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 application received from Mumbai Port Trust (MBPT) seeking amendment to the Order No. TAMP/26/2020-MBPT dated 16 March 2021 passed by this Authority approving the Schedule of Lease Rentals in respect of 9 Vacant Plots at various places in Mumbai to be allotted by E-Tender-cum-Auction method at MBPT, as in the Order appended hereto.

(T.S. Balasubramanian)
Member (Finance)

Tariff Authority for Major Ports
Case No. TAMP/26/2020-MBPT

The Mumbai Port Trust - - - Applicant

QUORUM

(i). Shri. T.S. Balasubramanian, Member (Finance)
(ii). Shri. Sunil Kumar Singh, Member (Economic)

O R D E R
(Passed on this 15th day of September, 2021)

This case relates to an application dated 02 August 2021 received from Mumbai Port Trust (MBPT) seeking amendment to the Order No. TAMP/26/2020-MBPT dated 16 March 2021 passed by this Authority approving the Schedule of Lease Rentals in respect of 9 Vacant Plots at various places in Mumbai to be allotted by E-Tender-cum-Auction method at MBPT.

2. It may be recalled that this Authority vide its Order No. TAMP/26/2020-MBPT dated 16 March 2021 has disposed the proposal received from MBPT seeking approval for Schedule of Lease Rentals in respect of 9 Vacant Plots at various places in Mumbai to be allotted by E-Tender-cum-Auction method at MBPT. The said order has been notified in the Gazette of India on 12 April 2021 vide Gazette No. 165.

3. In this backdrop, the MBPT vide its letter No.FA/OEA-L/13(20)/Gen/164 dated 2 August 2021 has requested to amend certain paras i.e**.** Para 7 (xi) as well as Note 1 of Annexure and Para 7(xii) of the order No. TAMP/26/2020-MBPT dated 16 March 2021. The submissions made by the MBPT in its application dated 2 August 2021 and the reasons for proposed amendment are tabulated below:

Sr. No.	Existing para	Proposed amendment	Reason for amendment
a.	Para 7 (xi) of the Order		
	"The MBPT is seen to have proposed a note to the effect that the lease rentals are valid upto 30.09.2022 with 4% increase every October and that first such increase will be effective from 01 October 2021." In this regard, it is relevant here to mention that Clause 13 (c) of the Land Policy Guidelines of 2014 stipulates that the Port Trust Board will fix a rate of annual escalation which would not be less than 2% and also mentions that the SOR would be re-fixed once in 5 years by TAMP. Accordingly, the MBPT has proposed 4% annual escalation. Also, since the lease rent being approved is for the period beginning 01 October 2020, the said lease shall be subject to its first annual escalation on 01 October 2021, in line with the Land Policy Guidelines, 2014.	The MBPT is seen to have proposed a note the effect that the lease rentals are valid upto 30.09.2022 with 4% increase every October and that first such increase will be effective from 01 October 2021. In this regard, it is relevant here to mention that Clause 13(c) of the Land Policy Guidelines of 2014stipulates that the Port Trust Board will fix a rate of annual escalation which would not be less than 2% and also mentions that the SOR would be re-fixed once in 5 years by TAMP. Accordingly, the MBPT has proposed 4% annual	In terms of Para 13(c) of PGLM, the approval of TAMP is necessary for the fixation of latest SOR. A Writ Petition filed by MbPT challenging TAMP's notification was pending before the Hon'ble High Court since, 2000. Subsequently, after deliberations with the Ministry, and the TAMP officials, the TAMP clarified that the SOR applicable to Township areas of MbPT from 01.10.2012 to be notified by TAMP and hence the Writ Petition was withdrawn from High Court by MbPT. In terms of clause 13 of PGLM, the SOR will be for 5 years. Therefore, revision of

	However, the MBPT has proposed the validity upto 30.9.2022 i.e. only for 2 years, which is changed to 30.09.2025. Accordingly, the Note prescribed is changed to the effect."	escalation. Also, since the lease rent being approved is for the period beginning 01 October 2020, the said lease shall be subject to its first annual escalation on 01 October 2021, in line with the Land Policy Guidelines, 2014. *The MBPT has proposed the validity upto 30.9.2022 i.e. only for 2 years. Accordingly, the Note prescribed is changed to the effect.*	SOR for the period from 01.10.2017 to 30.09.2022 is to be notified by TAMP. Accordingly, proposals for approval of SOR, for the lettings in Township Area, for above period has been mooted. The notified SOR for 9 vacant plots was prepared based on recommendations of Land Allotment Committee formed as per Para 13 of PGLM 2015 and approved by the Board vide TR No.261 & 301 of 2020 for the years' period from 01.10.2017 to 30.09.2022. Therefore, the validity of the SOR for the subject 09 vacant plots has been decided to be upto 30.09.2022 to bring the uniformity in SoR period of MbPT.
b.	Note 1 in Annexure (SOR)		
	"The lease rental shall remain in force for a period of five years effective from 1 October 2020 to 30 September 2025 subject to increase @ 4% p.a every October. First such 4% increase will be due on 01.10.2021."	The lease rental shall remain in force for a period effective from 1st October 2020 to *30th September 2022* subject to increase @ 4% p.a. every October. First such 4% increase will be due on 01.10.2021.	
c.	Para 7(xii) of the Order		
	"The MBPT has proposed another note to the effect that the rent will be worked out on the bases of the Actual Built-up area, subject to minimum of FSI 1.00. Since the said note gives clarity and would avoid ambiguity, the proposed note is approved. However, if rate will increase for higher FSI, the MBPT is advised to seek the approval of this Authority for such higher rate with due justification."	The MBPT has proposed another note to the effect that the rent will be worked out on the basis of the Actual Built-up area, subject to minimum FSI 1.00. Since the said note gives clarity and would avoid ambiguity, the proposed note is approved. However, *for higher FSI, the MbPT is advised to calculate rent proportionately as per applicable higher FSI at the same SOR rate approved by the TAMP.*	The SOR has been calculated taking into account FSI 1.00, which is a base unit. However, for any increased permissible FSI as per D.C. Regulations of MCGM and MbPT, SPA, rent will be calculated proportionately as per permissible FSI. There is no need to seek approval of the TAMP for increase in FSI which will be in accordance with applicable D.C. Regulations. Hence this clause needs to be amended as shown in italics.

4. With reference to the submissions made by MBPT vide its letter dated 2 August 2021, the following position emerges:

(i). Based on a proposal filed by Mumbai Port Trust (MBPT) in July 2020, this Authority vide its Order No. TAMP/26/2020-MBPT dated 16 March 2021 has approved the Schedule of Lease Rentals in respect of 9 Vacant Plots at various places in Mumbai belonging to MBPT and to be allotted by MBPT through E-Tender-cum-Auction.

(ii). In its proposal, the MBPT had proposed a note to the effect that the lease rentals are valid upto 30.09.2022 with 4% increase every October and that first such increase will be effective from 01 October 2021. In this regard, reference is drawn to para no. 7 (xi) of the Order dated 16 March 2021, which is reproduced below:

"*The MBPT is seen to have proposed a note to the effect that the lease rentals are valid upto 30.09.2022 with 4% increase every October and that first such increase will be effective from 01 October 2021.*

*In this regard, it is relevant here to mention that Clause 13(c) of the Land Policy Guidelines of 2014 stipulates that the Port Trust Board will fix a rate of annual escalation which would not be less than 2% and also mentions that the SOR would be re-fixed once in 5 years by TAMP. Accordingly, the MBPT has proposed 4% annual escalation. Also, since the lease rent being approved is for the period beginning 01 October 2020, the said lease shall be subject to its first annual escalation on 01 October 2021, in line with the Land Policy Guidelines, 2014. However, the MBPT has proposed the validity upto 30.9.2022 i.e. only for 2 years, which is changed to 30.09.2025. Accordingly, the Note prescribed is changed to the effect.***"**

As seen from above, the MBPT had proposed the validity of the rates only for a period of 2 years ending upto 30.9.2022. However, given that the Land Policy Guidelines mentions that the SOR would be re-fixed once in 5 years, the validity was prescribed for a period of five years effective from 1 October 2020 to 30 September 2025. Now, the MBPT has categorically requested that validity of the SOR for the subject 09 vacant plots be prescribed upto 30.09.2022, so as to bring the uniformity in SOR period of MBPT. In this regard, it is submitted that the lease rentals approved by the Board of Trustees for the lands of MBPT for the period from 1980 upto 30 September 2012 as per the Compromise formula had been upheld by the Hon'ble Supreme Court of India. As such, the Government had advised the MBPT in May 2019 to fix the SOR for all areas of Mumbai Port including Township areas with effect from 01 October 2012 onwards. As such, the MBPT has submitted various proposals in the past, seeking approval for lease rentals for the various areas of MBPT, for the quinquennial period from 01 October 2012 to 30 September 2017 as well as the quinquennial period from 01 October 2017 to 30 September 2022. Thus, to have uniformity in SOR period, the MBPT is seen to have proposed validity upto 30 September 2022 in respect of the Schedule of Lease Rentals for 9 Vacant Plots at various places in Mumbai. Prescription of a common validity period for all the land parcels would enable the port to file a comprehensive proposal for revision of lease rentals for the estates of MBPT (which has never materialized incase of MBPT till date), for the period beyond 30 September 2022. Based on the reasoning given by the Port and to have uniformity in the tariff validity period, this Authority is inclined to prescribe the validity upto 30 September 2022. As such, the note no. 1 forming part of the Schedule of Rates (SOR) for the 9 plots as approved vide Order dated 16 March 2021 is modified.

(iii). In its proposal, the MBPT had also proposed another note to the effect that the rent will be worked out on the basis of the Actual Built-up area, subject to minimum of FSI 1.00. In this regard, reference is drawn to para no. 7 (xii) of the Order dated 16 March 2021, which is reproduced below:

"*The MBPT has proposed another note to the effect that the rent will be worked out on the basis of the Actual Built-up area, subject to minimum of FSI 1.00. Since the said note gives clarity and would avoid ambiguity, the proposed note is approved. However, if rate will increase for higher FSI, the MBPT is advised to seek the approval of this Authority for such higher rate with due justification.***"**

In this regard, the MBPT has conveyed that the SOR has been calculated taking into account FSI 1.00, which is a base unit and in the event of any increased permissible FSI as per D.C. Regulations of MCGM and MBPT, the MBPT proposes to calculate rent proportionately as per applicable higher FSI at the same SOR rate approved by the TAMP. It is noteworthy that the LAC in its Report (which formed part of the original proposal of MBPT of July 2020), has recommended that the rate will be proportionally increased in case the permissible FSI is increased as may be applicable for any plot by MBPT SPA/ Planning Authority's new DC Regulations.

Given that the base lease rent as approved by this Authority vide the Order dated 16 March 2021 will remain intact and would be only proportionately increased based on the FSI, this Authority is inclined to approve the proposal of MBPT in this regard.

5.1. In the result, and for the reasons give above, and based on the collective application of mind, this Authority approves to replace the existing note no. 1 and 2 forming part of the Schedule of Rates (SOR) for the 9 vacant plots as approved vide Order dated 16 March 2021, with the following notes:

" 1. The lease rental shall remain in force for a period of two years effective from 1 October 2020 to 30 September 2022 subject to increase @ 4% p.a every October. First such 4% increase will be due on 01.10.2021

2. Rent will be worked out on the basis of Actual Built-Up Area, subject to minimum of FSI 1.00. In the event of any increased permissible FSI as per D.C. Regulations of MCGM and MBPT, the rent will be proportionately calculated as per applicable higher FSI at the same SOR rate as approved by the TAMP.

"

5.2. The MBPT is advised to make suitable changes in the Schedule of Rates (SOR) for the 9 vacant plots as approved vide Order dated 16 March 2021.

(T.S. Balasubramanian)
Member (Finance)