

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

- (a). No storage charges and hence no Royalty if cargo is cleared within the free period as per executed Concession Agreement.
- (b). If the cargo is cleared after the expiry of the free period as per executed Concession Agreement but within the extended free period, no storage charges will be there, but the concessionaire shall pay royalty equal to 1% of ARR; and
- (c). If the cargo is cleared after the extended free period, concessionaire shall pay royalty equal to quoted percentage on actual storages recovered or 1% of ARR whichever is higher, for the period beyond the extended period."

- (iv). The details of royalty payable by VGCBPL (Concessionaire) to the VPA (Concession Authority) if the Cargo is cleared within the extended free period i.e., 20 days, in one instance is shown below:

(Amt. in ₹)									
Vessel Name	Qty in MT	Date of commencement of Storage Charges	Date cargo was cleared	Storage Period	Storage Charges collected by the VGCBPL	Royalty @ 1% of ARR proportionately for the storage period (A)	Royalty received by VPA (B)	Royalty @ 1% of ARR proportionate to Metric Tonnes (C)	Difference in royalty (A-B/C)
MV CK BLUEBELL	43,664	02-08-2020	14-08-2020	13	-	71,679.45* (as per VGCBPL ARR calculation)	-	16,525.46 (Annex-II)	71,679.45/ 16525.46
						1,12,648.19** (as per TAMP Order dated 27.11.2009)	-	25,970.67 (Annex-II)	1,12,648.19/ 25,970.67

(* ARR by VGCBPL at ₹87,21,000*3/365=71,679.45

** ARR as per TAMP Order at ₹13705.53 lakhs * 1% * 3/ 365 = 112648.19)

1% of ARR as per the calculations provided by the VGCBPL for the FY 2020-21 is ₹87.21 lakhs & for the FY 2021-22 if is ₹87.56 lakhs (Annexure-I to the VPA application).

- (a). Relevant items from working of ARR (recalculated) by M/s.VGCBPL at Annexure-I furnished by VPA is reproduced below: (Detailed working is brought out in para 6.2 below and hence not reiterated)

Particulars	2020-21	2021-22
Project cost	444.10	444.10
Optimal capacity (re-assessed by VGCBPL) (in MMTPA)	1.87	1.87
Total Operating Expenses as per Norms and for optimal capacity	75.18	75.48
Add: ROCE @ 16%	12.03	12.08
Total ARR re-calculated by VGCBPL	87.21	87.56

[As stated above, estimated ARR as per upfront tariff Order of November 2009 approved by this Authority is ₹137.0553 crores as against recalculated ARR of ₹87.21 crores and ₹87.56 crores by VGCBPL for the years 2020-21 and 2021-22 respectively.]

- (b). Optimal capacity as per TAMP upfront Tariff Order of November 2009 and as recalculated parameters furnished by VGCBPL in the current application forwarded by VPA are as given below:

Particulars	As per TAMP Order of November 2009	As recalculated and furnished by VGCBPL in the current VPA application
Optimal Quay Capacity in MTPA	12.59	10.18
Optimal Yard Capacity in MTPA	10.18	1.87
Optimal Capacity of the Terminal (lower of the Quay and Yard Capacity)	10.18	1.87
Annual Revenue Requirement (₹ in crores)	137.06	87.21 (For 2020-21)

- (v). The details of royalty payable by VGCBPL (Concessionaire) to the VPA (Concession Authority), if Cargo is cleared after the extended free period i.e., 20 days, in an instance is shown below:

TABLE - A
Proportionate to number of days basis calculation

(Amt. in INR)										
Vessel Name	Cargo Qty in MT	Storage Period	Storage Charges collected by Concessionaire	Royalty on storage charges collected @ 38.10%	Storage Charges to be collected as per TAMP notification	Royalty on storage charges to be collected @ 38.10%	1% of ARR proportionately for the storage period	Royalty Higher of (G) or (H)	Royalty paid	Difference
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)			
MV ELECTRA	82,460	74	2,81,745	1,07,344 (38.1% of 281745)	1,71,25,497 (Annexure-III)	65,24,814 (38.1% of 1,71,25,497)	15,29,162*	65,24,814	1,07,344	64,17,470
							24,40,711/- ** (as per TAMP Order dated 27.11.2009 ARR)	-do-	-do-	-do-

(*87,21,000*64/365 = 15,29,162/-

** ARR as per TAMP Order 13705.53 lakhs * 1% * 64/ 365 = 24,40,711/-)

TABLE - B
Proportionate on Metric Tonne basis calculation

(Amt. in INR)										
Vessel Name	Cargo Qty in MT	Storage Period	Storage Charges collected by Concessionaire	Royalty on storage charges collected @ 38.10%	Storage Charges to be collected as per TAMP notification	Royalty on storage charges to be collected @ 38.10%	1% of ARR proportionate to the Metric tonnes	Royalty Higher of (G) or (H)	Royalty paid	Difference
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)			
MV ELECTRA	82,460	74	2,81,745	1,07,344 (38.1% of 281745)	1,71,25,497 (Annexure-III)	65,24,814 (38.1% of 1,71,25,497)	97,60,561 (Annex-III) #	97,60,561	1,07,344	96,53,217
							1,53,39,257 # (Annex-III) (as per TAMP Order dated 27.11.2009 ARR)	1,53,39,257	1,07,344	1,52,31,913

[Working is attached as Annexure -III to the VPA application.]

- (vi). In view of the above, VPA has requested to clarify the following:
- (a). 1% ARR is to be computed as per the upfront tariff Order dated 27.11.2009 i.e. 1% of ₹137.06 crores which is 1.37 crores or ARR as worked by VGCBPL stated above.

- (b). 1% ARR is to be proportionate on tonnage basis or number of days basis.
- (c). Also in case of point no.(iii) [i.e. para 4(c) of MOPSW letter dated 11 July 2018], it is stated as "Actual storage charges recovered". In this regard, it may be clarified whether it is on rate as per TAMP approved or the rate charged by the terminal operator i.e. if he has collected less than the notified rates.

3. Before proceeding further in the matter, a brief background is as follows:

- (i). This Authority vide Order No.TAMP/58/2008-VPT dated 27 November 2009 had approved upfront tariff for mechanized handling of coking and steam coal at the General Cargo Berth on DBFOT basis based on the proposal of VPA following the upfront tariff guidelines of 2008.
- (ii). As per clause 2.9.1 of the said upfront tariff guidelines of 2008, this Authority vide Order No.TAMP/58/2008-VPT dated 11 January 2013 notified the indexed SOR in the name of the BOT operator viz. VGCBPL who was awarded the said PPP project by VPA based on bid invited by VPA which included the notified upfront tariff Order dated 27 November 2009.
- (iii). Subsequently, in pursuance of the then MOS letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 for rationalisation of storage charge on the stressed PPP Project and based on the proposal of VPA, this Authority has approved the following Orders approving rationalised storage charge by extending the free period of 10 days prescribed in the January 2013 Order to 20 days. In each of the tariff Orders, this Authority approved rationalised storage charge for a period of one year on each occasion in compliance with the MOS letter dated 11 July 2018.

Order No.	Date	Validity of rationalised storage charge approved by this Authority
No.TAMP/9/2019-VPT	24 July 2019	21.01.2019 to 20.01.2020
No.TAMP/14/2020-VPT	01 June 2020	21.01.2020 to 20.01.2021
No.TAMP/39/2021-VPT	25 October 2021	21.01.2021 to 20.01.2022

- (iv). The VPA in the present application filed has sought clarification from TAMP on computation of royalty storage charge for the period the rationalised storage charge was approved by TAMP for stressed project as per MOPSW letter dated 11 July 2018.

4.1. The Ministry of Law and Justice has published the Major Port Authorities (MPA) Act, 2021 in the Gazette of India vide Gazette no.3 dated 18 February 2021. The said MPA Act, 2021 has come into force with effect from 3 November 2021.

4.2. As per Section 54(1) of the said Act, the Central Government may constitute a Board to be known as Adjudicatory Board to perform the functions enlisted in Section 58 of the Act. Further, the first proviso under Section 54(1) of Act states that until the constitution of the Adjudicatory Board, the Tariff Authority

for Major Ports constituted under section 47A of the Major Port Trusts Act, 1963 shall discharge the functions of the Adjudicatory Board (other than tariff setting) under the MPA Act, 2021 and shall cease to exist immediately after the constitution of the Adjudicatory Board.

4.3. Amongst the various functions of the Adjudicatory Board prescribed in sub section (1) of Section 58, clause (e) requires Adjudicatory Board to look into any matter relating to operations of Major Ports as referred by Central Government or Board and to pass orders or give suggestions, as the case may be.

4.4. The application filed by the VPA flows from difference between VPA and PPP Concessionaire VGCBPL on computation of royalty payment from storage charge for its operations in the port for the period the project was stressed. The present exercise undertaken by this Authority on the subject application, falls within the ambit of Section 58(1)(e) of the MPA Act, 2021.

4.5. In view of the above position, application of VPA dated 14 February 2023 is taken up for Adjudication in terms of provision under Section 54(1) read with Section 58(1)(e) of the MPA Act, 2021.

5.1. While acknowledging the application filed, the VPA vide our letter dated 23 February 2023 was requested to explain as to how the proposal of VPA and calculation of VGCBPL complies with Para 4 of the then MOS now Ministry of Ports, Shipping and Waterways (MOPSW) letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Project.

5.2. In response, the VPA vide its email dated 24 February 2023 has responded as follows:

Para 4 of MOPSW letter No.PD-13/1/2018-PPP Cell dated 11 July 2018		Reply furnished by VPA
4(i)	No storage charges and hence no Royalty if cargo is cleared within the free period as per executed concession agreement.	Agreed.
4(ii)	If the cargo is cleared after the expiry of free period as per executed concession agreement but within the extended free period, no storage charges will be there but the concessionaire shall pay Royalty equal to 1% of ARR and	Example of 1% of ARR calculation was worked out and sent in our proposal dated 14.02.2023. Since what is ARR is not mentioned in the Ministry Letter dated 11.07.2018, a practical example was worked out for vessel MV CK Bluebell in VPA letter dated 14.02.2023. TAMP is sought to clarify 1% ARR is to be computed as per the upfront tariff order dated 27.11.2009 i.e. 1% of ₹137.06 crores which is 1.37 crores (or) ARR as worked by VGCBPL and 1% ARR is to be proportionate on tonnage basis or number of days basis for each vessel.
4(iii)	If the cargo is cleared after the extended free period, concessionaire shall pay Royalty equal to quoted percentage on actual storage charges recovered or 1% of ARR whichever is higher, for the period beyond the extended period.	A practical example was worked out for vessel MV ELECTRA in VPA letter dated 14.02.2023. As regards "Actual storage charges recovered" TAMP is requested to clarify, whether it is as per TAMP approved rates or the rate charged by the terminal

		operator i.e. if he has collected less than the notified rates and 1% ARR is to be proportionate on tonnage basis or number of days basis for each vessel.
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6.1. A copy of the communication received from the VPA dated 14 February 2023 was also forwarded to VGCBPL vide TAMP letter dated 23 February 2023. The VGCBPL was requested to furnish parawise comments on the application filed by VPA and to specifically furnish its remarks as to how the proposal of VPA and calculation of VGCBPL complies with Para 4 of MOPSW letter dated 11 July 2018. This was followed by a reminder dated 24 March 2023.

6.2. In response, the VGCBPL vide its email dated 4 April 2023 has furnished its comments on queries of VPA as given below:

- (i). **Query 1 of VPA:** 1% ARR is to be computed as per the upfront tariff order dated 27.11.2009 i.e. 1% of ₹137.06 crores which is ₹1.37 crores or ARR as worked by VGCBPL.

Comments of VGCBPL:

The Tariff guidelines issued by TAMP as specified above has also defined the methodology of calculation of ARR (Annual Revenue Requirement) in clause 3.8 of the Upfront Tariff Guidelines of 2008. Clause 3.8.1 of the upfront tariff Guidelines of 2008 on the method of computation of optimal capacity and 3.1 and 3.2 of Annex-III to the said guidelines produced by VGCBPL are not reproduced here for the sake of brevity.

(A) The calculation of Optimal Quay Capacity (as per the TAMP guidelines) re-calculated by VGCBPL is as follows:

$$= 0.7 * \frac{42}{100} \times 50000 + \frac{58}{100} \times 40000 + \frac{0}{100} \times 27000 \times 365$$

$$= 11.29 \text{ MMTPA}$$

(B) The calculation of Optimal Yard Capacity by VGCBPL based on TAMP guidelines is as follows:

Optimal yard capacity		1.87 MMTPA
A -	Area of the yard made available by the port for development in sq.m.	1,06,000.00
U -	Percentage of total yard area that could be used for stacking	0.70
Q -	Quantity that could be stacked per sq.m. of area	3.00
T -	Turnover ratio of the plot in a year	12.00

So, the Normative optimal capacity of the terminal is lower of (A) and (B) i.e., 1.87 MMTPA.

Therefore, the calculation of Annual Revenue Requirement (ARR) by the VGCBPL is as follows:

Annual Revenue Requirement				
Particulars	Basis	UOM	2020-21	2021-22
Project cost		₹ in crores	444.10	444.10
Optimal capacity reassessed by VGCBPL		MMTPA	1.87	1.87
Calculation of Operating cost re-calculated by VGCBPL				
Power	1.4 unit/ ton	₹ in crores	1.62	1.62
(a) Repair and maintenance of civil assets	1% of cost of all civil assets	₹ in crores	1.17	1.17
(b) Repair and maintenance of mechanical and electrical equipment including spares	7% of cost of all mechanical and electrical equipment	₹ in crores	16.18	16.18
Insurance	1% of Gross Fixed Assets value	₹ in crores	4.44	4.44
Depreciation	As per norms prescribed in Companies Act or any norms prescribed in the licence agreement whichever is higher.	₹ in crores	25.40	25.55
Licence Fee (rentals for land and other port assets)	As per Scale of Rates of the concerned Major Port Trust.	₹ in crores	4.17	4.32
Other expenses	5% Gross Fixed Assets Value	₹ in crores	22.21	22.21
Total Expenses		₹ in crores	75.18	75.48
Add: ROCE @ 16%		₹ in crores	12.03	12.08
Total Annual Revenue Requirement from Handling Services		₹ in crores	87.21	87.56

So, 1% of ARR re-calculated based on the upfront tariff Guidelines of 2008 is ₹0.87 crores and ₹0.88 crores for FY 2020-2021 and FY 2021-2022 respectively.

- (ii). **Query 2 of VPA:** 1% ARR is to be proportionate on tonnage basis or number of days basis.

Comments of VGCBPL:

It is clear and evident from the guidelines that, ARR is “Annual Revenue Requirement”. And, it is to be considered on a wholistic basis for a financial year irrespective of vessels, number of days or tonnage basis, etc.

- (iii). **Query 3 of VPA:** As regards the term “Actual storage charges recovered” in para 4 of MOS letter dated 11.07.2018, it may be clarified whether it is on rate as per TAMP approved or the rate charged by the terminal operator i.e., if he has collected less than notified rates.

Comments of VGCBPL:

The rationale behind identifying the project as stressed asset is for giving relief to the concessionaires from abnormal storage charges which are charged as per SOR and to attract more customers.

As specified in MOPSW letter No.PD-13/1/2018-PPPCell dated 11.07.2018.

“The higher storage charges also leading to diversion of cargo to neighboring competing ports, the income generation from the project has been coming down making the asset unviable because of reduction in throughput. This is affecting not only the revenue share but the revenue from the vessel related charges is also decreasing for the concessioning authority”.

So, the term “Actual storage charges recovered” is the tariff charged by the terminal operator to the customer and recovered and not the TAMP approved rate as in the latter case it will defeat the very purpose of stressed asset categorization as per Ministry’s letter dated 11.07.2018.

It is very much evident that the relaxation provided on storage charges has resulted in increase of volume from 4.9 MMT in FY19 to 6.5 MMT in FY22 and in monetary term the increase in royalty to VPA is ~30% (₹84 crores in FY19 to ₹109 crores in FY22). Hence, VGCBPL is requested to permanently allow them to pay the royalty on storage charges based on actual collection basis or 1% of ARR whichever is higher irrespective the project being classified as stressed or not as this will help us in attracting more customers which will increase the volumes and also revenues to VPA and will help in coming out of the vicious circle of stressed asset.

This will surely increase the royalty revenue and other port dues income of VPA through increased volumes instead of earning through reduced volume (due to migration) and notional storage charges.

6.3. A copy of the comments received from VGCBPL was forwarded to VPA vide our letter dated 10 April 2023 for further comments/ feedback, if any. No further response is received from the port.

7. On a preliminary scrutiny of the application filed by the VPA, both the VGCBPL and the VPA vide our emails dated 11 April 2023 were requested to furnish information/ clarification on a few points. A summary of the information/ clarification sought from VGCBPL/ VPA and reply furnished by VPA vide its email dated 20 April 2023 and by VGCBPL vide email dated 04 May 2023 is tabulated below:

Sl. No.	Information/ clarification sought from VGCBPL/ VPA	Reply of VPA	Reply of VGCBPL
	The Authority vide Order No.TAMP/58/2008-VPT dated 27 November 2009 has approved upfront tariff for	The VPA has stated that the difference of 1%	Soft copy of ARR calculation is

<p>coking coal and steam coal based on the proposal filed by VPA and following the Upfront Tariff Guidelines of 2008. As per the said Order, the upfront tariff notified is applicable for the entire project period subject to annual indexation in the tariff @ 60% of the WPI. As per the cost statement attached to the Order, the Authority has considered the following relevant parameters following the Upfront Tariff Guidelines of 2008 for the approving at the upfront tariff:</p>	<p>ARR calculation by M/s.VGCBPL could be seen only when special auditor was appointed under clause 9.2. of Concession Agreement for audit of Gross revenue from the year 2018 onwards. M/s.VGCBPL has calculated 1% of Annual Revenue Requirement yearly unilaterally. Since calculation of royalty by M/s. VGCBPL in the above manner and payment of royalty as per VPA calculation is differing since 11.07.2018, it was requested to clarify on computation of 1% ARR as to whether 1% ARR is proportionate on tonnage basis/ no. of days and on what is meant by "actual storage charges recovered".</p>	<p>attached. VGCBPL has followed TAMP Guidelines for calculation of ARR. [Calculation furnished by VGCBPL is same as furnished to VPA earlier and attached by the VPA to its application].</p>								
<table border="1"> <tr> <td>Optimal Quay Capacity in MTPA</td> <td>12.59</td> </tr> <tr> <td>Optimal Yard Capacity in MTPA</td> <td>10.18</td> </tr> <tr> <td>Optimal Capacity of the Terminal (lower of the Quay and Yard Capacity)</td> <td>10.18</td> </tr> <tr> <td>Annual Revenue Requirement (₹ in crores)</td> <td>137.06</td> </tr> </table>	Optimal Quay Capacity in MTPA	12.59	Optimal Yard Capacity in MTPA	10.18	Optimal Capacity of the Terminal (lower of the Quay and Yard Capacity)	10.18	Annual Revenue Requirement (₹ in crores)	137.06		
Optimal Quay Capacity in MTPA	12.59									
Optimal Yard Capacity in MTPA	10.18									
Optimal Capacity of the Terminal (lower of the Quay and Yard Capacity)	10.18									
Annual Revenue Requirement (₹ in crores)	137.06									
<p>As against the above, it is seen from the VPA application that the VGCBPL has considered the following for arriving at the Royalty payable to VPA w.r.t. the rationalized storage charge approved by the Authority:</p>										
<table border="1"> <tr> <td>Optimal Quay Capacity in MTPA</td> <td>10.18</td> </tr> <tr> <td>Optimal Yard Capacity in MTPA</td> <td>1.87</td> </tr> <tr> <td>Optimal Capacity of the Terminal (lower of the Quay and Yard Capacity)</td> <td>1.87</td> </tr> <tr> <td>Annual Revenue Requirement (₹ in crores)</td> <td>87.21</td> </tr> </table>	Optimal Quay Capacity in MTPA	10.18	Optimal Yard Capacity in MTPA	1.87	Optimal Capacity of the Terminal (lower of the Quay and Yard Capacity)	1.87	Annual Revenue Requirement (₹ in crores)	87.21		
Optimal Quay Capacity in MTPA	10.18									
Optimal Yard Capacity in MTPA	1.87									
Optimal Capacity of the Terminal (lower of the Quay and Yard Capacity)	1.87									
Annual Revenue Requirement (₹ in crores)	87.21									
<p>The Authority while approving the rationalized storage charge based on proposal of VPA has only approved 20 days free period as against 10 days free period prescribed in the Upfront Tariff Order dated 27 November 2009 in pursuance of the MOPSW letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects.</p>										
<p>Hence, the basis and the relevant clause of the Upfront Tariff Guidelines of 2008/ MOPSW letter No.PD-13/1/2018-PPP Cell dated 11 July 2018 on Stressed PPP Projects based on which VGCBPL has computed revised Optimal Capacity and ARR for computation of royalty on rationalized storage charge may please be furnished.</p>										

8.1. A copy of the VPA application along with brief back ground was forwarded to both the Deendayal Port Authority (DPA) and Mormugao Port Authority (MOPA) vide our emails dated 11 April 2023 with a request to clarify as to how the Royalty/ Revenue Share is computed/ charged by the Port on the rationalized storage charges approved by this Authority for stressed PPP project in their port in pursuance of MOPSW letter dated 11 July 2018, which may be supported with sample working.

8.2. In response, DPA vide its letter dated 15 May 2023 under cover of its email dated 15 May 2023 has stated as follows:

- (i). The storage charges for the rationalized period are worked as per TAMP approved rationalized rates irrespective of the fact that whether discount has been given by AKBTPL on storage charges or not, the

working has been prepared on the basis of rationalized rates for the rationalized period as per TAMP Order. The amount of royalty on storage charges to be paid as per 5% of ARR is higher than the Royalty amount calculated on the revenue considering rationalized rates. Accordingly, AKBTPPL has paid the amount of royalty on storage charges calculated based on 5% of ARR.

- (ii). Table showing royalty amount calculated as per TAMP approved rationalized rates and amount calculated as per 5% of ARR is shown below:

(₹ in Cr.)		
FY	Royalty amount as per TAMP approved rationalized rates for rationalized period	Amount as per 5% of ARR
2018-19 (11.07.2018 to 31.03.2019)	1.09	2.72
2019-20 (01.04.2019 to 31.03.2020)	2.98	3.86
2020-21 (01.04.2020 to 19.02.2021)	3.17	3.47
Total	7.23	10.05

8.3. In response to para 9.2 above, MOPA vide its letter dated 15 May 2023 has made following submissions:

- (i). The royalty on storage charges is calculated as per the TAMP notification No.TAMP/31/2020-MOPT dated 17 November 2020 applicable to MOPA and in terms of MOPSW letter dated 11 July 2018, which is percentage of actual storage charges recovered or 1% of ARR whichever is higher.
- (ii). To arrive at the ARR, the annual indexation factor is applied to the Revenue Requirement considered by TAMP which is ₹85.28 lakhs for MOPA as per the TAMP Order No.TAMP/23/2008-MOPT dated 07 August 2008.
- (iii). The Sample working is given below:

(₹ in lakhs)		
Sr. No.		Amount
(1)	Royalty on actual storage charges say 20% on total Storage charges	100
(2)	Total storage charges collected by PPP operator per annum	50
(3)	ARR	8528.00
(4)	Annual Indexation factor for FY 2021-22	143.48
(5)	ARR (iii) * (iv)	12235.97
(6)	1% of ARR (v) above	122.36
(7)	Amount receivable towards the storage will be 2 or 6 whichever is higher	122.36

9. A hearing on this application was held on 04 May 2023 through Video Conferencing. At the hearing, the VGCBPL made a power point presentation on

the subject matter. At the hearing, the VPA and VGCBPL have made the following submissions:

Vizag General Cargo Berth Private Ltd. (VGCBPL)

- (i). VGCBPL makes power point presentation.
- (ii). Upfront Tariff chargeable to customers was fixed by TAMP in 2009 on normative basis for the PPP project of mechanisation of General Cargo Berth at VPA under the Upfront Tariff Guidelines, 2008.
- (iii). VGCBPL has re-calculated the optimal capacity and ARR following the methodology prescribed in the Upfront Tariff Guidelines, 2008.
- (iv). As per Tariff Guidelines, 2008, optimal capacity is to be lower of quay or yard capacity. Going by the formula prescribed in the said guidelines, VGCBPL has re-assessed optimal quay capacity at 11.29 MTPA. The optimal yard capacity is assessed at 1.87 MTPA following the norms prescribed in the said guidelines. Lower of two optimal capacity being 1.87 MTPA is considered by VGCBPL.
- (v). VGCBPL has re-assessed the operating cost at ₹75.18 crores for the year 2020-21 and ₹75.48 crores for the year 2021-22 following the norms prescribed in the guidelines with respect to optimal capacity now assessed by VGCBPL at 1.87 MTPA.
- (vi). The project cost of ₹444.10 crores in the TAMP Order of 2009 is reckoned with for computing 16% ROCE. The ARR comprising of the operating cost plus 16% ROCE is assessed at ₹87.21 crores for the year 2020-21 and ₹87.56 crores for the year 2021-22 by the VGCBPL.

[Member (Finance), TAMP: VGCBPL is not required to rework the ARR or the optimal capacity or storage tariff. There is no question of reworking out the ARR or optimal capacity or tariff. In the November 2009 upfront tariff Order approved by TAMP, ARR considered is ₹137.06 crores which is to be taken as the base with applicable annual indexation.]

- (vii). VGCBPL is paying 6 times higher than the ARR estimated for storage charge.

Vizag General Cargo Berth Private Ltd. (VGCBPL)

[Shri Vinay Chaurasia]

- (i). Non major ports are not collecting storage charge. Due to high storage charge at the approved rate, cargo is moving away from VPA to private ports.
[Member (Finance), TAMP: TAMP approved rate is the ceiling. Operator can charge lower rate.]

- (ii). Will the rationalised storage charge approved by TAMP apply for the remaining project period of around 20 years?
[Member (Finance), TAMP: Rationalised storage approved by TAMP for the VGCBPL is in compliance with the Ministry of Shipping letter dated 11 July 2018 for the stressed PPP Project. The rationalised storage charge approved by TAMP for VGCBPL is applicable for the period stated in the relevant Orders.]
- [VPA: Rationalised storage charge will apply for the period the project is stressed. For the remaining period, rate for storage as per the Concession Agreement will prevail.]
- (iii). VGCBPL has reached 6 MTPA in the year 2021-22. We will cross beyond 70% optimal capacity this year. So the stressed project tag will not apply to VGCBPL. VGCBPL will not be able to collect storage charge as per TAMP approved SOR in future when project is not under stressed category.
- (iv). The approved upfront tariff Order prescribes 10 days free period. Whereas, the present dwell time at VGCBPL is 50 days. Neighbouring private ports are giving 90 days free period. Beyond that nominal storage rate is levied. So our request is that for the future when the VGCBPL is not a stressed project, 1% of indexed ARR pertaining storage charge or revenue share as per the Concession Agreement on the actual storage whichever, is higher may continue to be applied even beyond the stressed period.
- (v). Revenue share on storage charge is not to be seen as the main source of revenue by the port. Customers are migrating to non-major ports due to high storage at VGCBPL. VGCBPL wants to focus on handling charge and increase the volume. Thereby, port will also get higher revenue share.
- (vi). We agree that ARR need to be considered at ₹137.26 crores as assessed in TAMP order with annual indexation @ 60% of WPI variation. We will pay 1% of the indexed ARR from storage charge or revenue share on actual storage whichever is higher.

Vizag General Cargo Berth Private Ltd. (VGCBPL)

[Shri Ramprasad]

- (i). 98% of the revenue of PPP Concessionaire is from handling charge. Port should encourage PPP Concessionaire to achieve higher volume on which port will earn revenue share @ 38.10%.
- (ii). We are likely to cross 70% of optimal capacity. If the port for the future goes by storage charge as per the Concession Agreement, it will become difficult for us.
[Member (F) TAMP: Present matter filed by VPA relates to clarification on computation of revenue share payable by VGCBPL to VPA with

reference to the rationalised storage charge approved by TAMP during stressed Project. As regards the point of VGCBPL, for the subsequent period i.e. after the stressed project period is over, the VPA and operator may explore other options prescribed in the Concession Agreement, refer to the Conciliation and Settlement Committee or refer to Adjudicatory Board to be constituted by the Central Government.]

Visakhapatnam Port Authority (VPA)

- (i). What is the actual storage referred in MOPSW letter of 11 July 2018 on stressed PPP project?
[Member (Finance), TAMP: MOPSW letter of 11 July 2018 states actual storage charge recovered by the operator.]

Vizag General Cargo Berth Private Ltd. (VGCBPL)

- (i). Upfront tariff guidelines, 2008 prescribes 25 days free period for coal terminal. Hence, free period may be increased from 10 days to 25 days for VGCBPL.
[TAMP: Upfront tariff including the free period approved in the 2009 Order is for the entire project period subject to annual indexation in the tariff. The free period and interlinked turnover parameter considered in the upfront tariff Order of 2009 are as proposed by VPA for the detailed reasoning given in the said Order.]

10. Subsequent to the hearing, the VPA vide its letter dated 12 May 2023 under cover of its email dated 12 May 2023 has made following further submissions:

- (i). Royalty to be paid by the concessionaire VGCBPL is by 7th of the following month. Therefore, the methodology for collection of monthly royalty on storage charges i.e. on vessel to vessel basis, number of days stored or tonnage basis may be clarified in order to recover 1% of ARR ₹1.37 Cr.
- (ii). As per Article 9.2 (b) of the concession agreement dated 10 June 2010, discounts and deferments, if any offered by the concessionaire to the users or amounts if any collected by the concessionaire for any reason whatsoever in respect of the project facilities and services, shall be ignored for the purpose of gross revenue.

The concessionaire has provided more free storage period against the TAMP prescribed free storage of 20 days. It may not be out of place to mention that, the concessionaire in their letter mentioned that if more free storage period is allowed, the business will increase and accordingly port will get more royalty. However, the same is not in line with concession agreement and notifications issued by TAMP. Hence, TAMP notified rates should be followed for calculation of "Actual storage charges recovered" in case (iii) on which royalty @ quoted percentage or 1% of ARR whichever is higher is to paid.

- (iii). It is understood from MOS letter dated 11 July 2018 that (i) Royalty equal to 1% ARR is to be paid for cargo cleared after the expiry of free period as per executed concession agreement but within the extended free period i.e. 11 to 20 days and also (ii) royalty equal to 1% ARR on cargo cleared beyond 20 days if actual storage charges recovered are less than 1% ARR. A line of confirmation may be given on the above.

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

- (i). This application filed by Visakhapatnam Port Authority (VPA) seeks clarification about computation of Royalty on storage charges payable by Vizag General Cargo Berth Pvt. Ltd. (VGCBPL) to VPA for the period the terminal was categorized as stressed and rationalized storage charge was approved by this Authority in pursuance of the then Ministry of Shipping (MOS) [now the Ministry of Ports, Shipping and Waterways (MOPSW)] letter dated 11 July 2018.

The VGCBPL is governed by the upfront tariff guidelines 2008. This Authority vide Order No.TAMP/58/2008-VPT dated 27 November 2009 has approved upfront tariff following the Upfront Tariff Guidelines of 2008. Subsequently, indexed SOR in the name of the VGCBPL was notified by this Authority vide Order No.TAMP/58/2008-VPT dated 11 January 2013. Thus, VGCBPL is eligible to collect tariff as prescribed in the indexed Scale of Rates (SOR) notified by Authority vide Order dated 11 January 2013 for the entire project period subject to automatic annual indexation in tariff to the extent of 60% of the Wholesale Price Index as stated in the SOR.

The VGCBPL terminal was classified as stressed project by VPA for each of the period 21.1.2019 to 20.1.2020, 21.1.2020 to 20.1.2021 and 21.2.2021 to 20.1.2022 as per the criteria prescribed by the MOPSW in its letter No.PD-13/1/2018-PPP Cell dated dated 11 June 2018. That being so, based on the proposal of the port and in compliance of the said MOPSW letter, this Authority has approved three tariff Orders for the period the VGCBPL was classified as stressed project by VPA. This Authority has approved rationalized storage charge by increasing the free period prescribed in the Orders dated 27 November 2009 and 11 January 2013 at 10 days to 20 days.

- (ii). Para No.4 of the MOPSW letter dated 11 July 2018 contains clause on the royalty payment by the PPP Concessionaires on the rationalized storage charges during the stressed period of the PPP Project. The said para is reproduced below for ease of reference:

"In respect of projects that are identified as stressed projects due to abnormal storage charges, the committee suggested the following option for rationalization of storage charges levied at the DBFOT

terminals to make them competitive with neighbouring Non-Major Ports which are run by private organisation:

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

- (a). *No storage charges and hence no Royalty if cargo is cleared within the free period as per executed Concession Agreement.*
- (b). *If the cargo is cleared after the expiry of the free period as per executed Concession Agreement but within the extended free period, no storage charges will be there, but the concessionaire shall pay royalty equal to 1% of ARR; and*
- (c). *If the cargo is cleared after the extended free period, concessionaire shall pay royalty equal to quoted percentage on actual storages recovered or 1% of ARR whichever is higher, for the period beyond the extended period."*

The VGCBPL and the VPA are thus governed by the above provisions as regards royalty payment during the period the VGCBPL was classified as stressed by VPA.

- (iii). The VGCBPL and VPA, however, have some differences as regards computation of royalty payment on storage charge for the period the terminal was classified as stressed. In this regard, the VPA has shared sample computation of royalty furnished by the VGCBPL and sample computation by the port and sought clarification on three points. The clarification sought by the VPA on the three points and detailed analysis thereon along with clarification by TAMP are dealt with in subsequent paragraphs.

(iv). **Clarification no.1 sought by VPA:**

- 1. 1% Annual Revenue Requirement (ARR) is to be computed as per the upfront tariff Order approved by TAMP vide Order No.TAMP/58/2008-VPT dated 27 November 2009 at ₹137.06 crores and 1% thereof from storage charge i.e. ₹1.37 crores or ARR as worked by VGCBPL?

Analysis and Clarification:

- (a). The upfront tariff Order No.TAMP/58/2008-VPT dated 27 November 2009 approved by this Authority under the Upfront Tariff Guidelines of 2008 considered the following parameters for approving the upfront Scale of Rates of the General Cargo berth of VPA:

Optimal Quay Capacity in MTPA	12.59
Optimal Yard Capacity in MTPA	10.18
Optimal Capacity of the Terminal (lower of the Quay and Yard Capacity)	10.18
Total Capital Cost estimated for handling activity (₹ in crores)	351.14
Total operating Cost (as per norms and for the Optimal Capacity)	80.8726

ROCE @16% of the Capital Cost (₹ in crores)	56.1827
Total Annual Revenue Requirement (₹ in crores)	137.0553 (rounded off here to ₹137.06 cr)
Annual Revenue Requirement apportioned to arrive at storage charge is 1% (₹ in crores)	1.3706

- (b). In the current application filed by the VPA, VGCBPL has re-assessed the optimal capacity of the terminal at 1.87 MTPA and also re-calculated the total ARR from handling activity at ₹87.21 crores for the year 2020-21 and ₹87.56 crores for the year 2021-22.
- (c). As per Upfront Tariff Guidelines of 2008, the upfront tariff approved by this Authority in the tariff Order dated 27 November 2009 is applicable for the entire project period with automatic annual indexation in tariff @ 60% of the WPI. Both the VGCBPL and VPA despite request have not been able to draw reference to the relevant clause of the Upfront Tariff Guidelines of 2008 or MOPSW letter dated 11 July 2018 for re-calculation of optimal capacity and ARR done by VGCBPL for computation of royalty on storage charge for the period the project was stressed. The approach adopted by the VGCBPL of re-calculating the optimal capacity, tariff and the Annual Revenue requirement is neither found to be in line with upfront tariff guidelines of 2008 nor as per the MOPSW letter dated 11 July 2018 on stressed PPP Project.
- (d). It is, therefore, clarified here that ARR assessed as per the upfront tariff Order No.TAMP/58/2008-VPT dated 27 November 2009 at ₹137.06 crores approved by this Authority is to be considered and 1% thereof which is ₹1.3706 crores is to be taken as the base with the applicable indexation factor for computation of royalty on storage charge for the stressed period.
- (v). **Clarification nos.2 and 3 sought by VPA**
2. 1% ARR is to be proportionate on tonnage basis or number of days basis?
 3. Para 4(c) of MOPSW letter dated 11 July 2018], it is stated as "Actual storage charges recovered". In this regard, it may be clarified whether it is on rate as per TAMP approved or the rate charged by the terminal operator i.e. if he has collected less than the notified rates.

Analysis and Clarification:

Chapter 3 of the report of the IPA attached to the MOPSW letter dated 11 July 2018 states that one of the reasons for stress in the PPP project is abnormally high storage charge at PPP terminals resulting in diversion of cargo to neighboring competing ports. Thereby, income generation of the project comes down leading to underutilization of the terminal and this has adverse impact on the viability of the project. This not only affects revenue share receipts of the port adversely but, also the revenue from vessel related charges to ports get reduced. One of recommendations in the said report for PPP projects identified as stressed is, to rationalise the storage charge by increasing the free period with a view to optimise the capacity of the terminal. The MOPSW letter requires the concerned port to review the project periodically following the prescribed criteria for classification as stressed PPP project.

As per 4 of the MOPSW letter dated 11 July 2018, no royalty is payable by the PPP concessionaire if cargo is cleared within the free period as per executed Concession Agreement. For the cargo cleared after the expiry of the free period as per executed Concession Agreement; but, within the extended free period, no storage charges is there, but the concessionaire shall pay royalty equal to 1% of ARR. And, if the cargo is cleared after the extended free period, concessionaire shall pay royalty equal to quoted percentage on actual storages recovered or 1% of ARR whichever is higher.

The spirit of the said MOPSW letter is to provide interim relief for PPP projects during the period their project is classified as stressed by the port due to prescription of abnormally high storage charge in TAMP order. The MOPSW letter at the same time protects the interest of the port by prescribing 1% of the ARR from storage charge (after applying annual indexation) as the minimum level of royalty payment by PPP Concessionaires to the port during the prescription of rationalized storage charge for the period the project is stressed.

Para 4 of the MOPSW letter about royalty payment has to be read in a holistic manner. The term ARR is the Annual Revenue Requirement for the financial year. For the purpose of para 4 of the MOPSW letter, the ARR as considered in TAMP upfront tariff Order and apportioned towards storage charge is to be considered after applying annual indexation. The MOPSW letter does not require ARR to be re-worked proportionate to number of days or on tonnage basis for the purpose of royalty computation as done by VPA/ VGCBPL.

1% of ARR considered towards storage charge is the minimum royalty payable by the Concessionaire to the port per annum for stressed period of the project. If the royalty payment at the percentage agreed in the Concession agreement on the actual storage charge recovered by the PPP Concessionaire is higher than 1% of the ARR from storage

charge after applicable indexation; then, the royalty payment will be at the agreed percentage in the Concession Agreement on the actual storage charge recovered by the PPP Concessionaire.

On the other hand, if the PPP Concessionaires collect storage charge lower than the TAMP approved rationalized storage charge, then as per careful and comprehensive reading of para 4 of the MOPSW letter along with the report of IPA, the PPP Concessionaire is to pay 1% of the ARR from storage charge after appropriate annual indexation.

The another point on which VPA has sought clarification is as to whether "Actual storage charges recovered" in the MOPSW letter in para 4 is on storage rate as approved by TAMP in the rationalized tariff Order or the storage charge recovered by the terminal operator.

In this regard, it is to state that MOPSW letter states the words "actual storage charge recovered". These words in literal sense here means actual storage charge recovered by the PPP Concessionaire and hence has to be interpreted in its literal sense and not the rationalised storage charge as per TAMP Tariff Order.

The sample calculation furnished by the MOPA, clearly shows comparison of the actual storage charge collected by the PPP Concessionaire is done by MOPA with the indexed ARR from storage charge and higher of the two is shown as revenue share payable by the PPP Concessionaire. In both the sample case of DPA and MOPA, it is seen that the 1% of ARR from storage charge after indexation is higher and hence that would become payable by the PPP Concessionaire to the port for the stressed period.

In view of the above position and recognizing that the VPA and the VGCBPL are governed by para 4 of the MOPSW letter dated 11 July 2018 for the period the project is classified as stressed, the royalty payable by VGCBPL for the period the rationalized storage charge was approved by this Authority shall be 38.10% of revenue share as agreed in the Concession Agreement with VPA by the VGCBPL on the actual storage charge recovered by the VGCBPL; or, 1% of Annual Revenue Requirement from storage charge assessed at ₹1.3706 crores in the November 2009 Order after considering annual indexation factor based on annual indexation in tariff announced by TAMP, whichever is higher.

This is broadly in line with the approach followed at MOPA also for the stressed terminal in their port in pursuance of the MOPSW letter dated 11 July 2018.

Further, during the hearing, the VGCBPL has also acceded that ARR at ₹137.06 crores as assessed in TAMP order of November 2009 is to be considered and 1% thereof i.e. ₹1.3706 crores apportioned

towards storage charge will be the base. The VGCBPL has agreed at the hearing to pay VPA 1% of the indexed ARR from storage charge of ₹1.3706 crores or revenue share on actual storage recovered by VGCBPL, whichever is higher.

- (vi). During the processing of the case the VPA has pointed out that as per the Concession Agreement, royalty to be paid by the concessionaire VGCBPL is by 7th of the following month. Therefore, the VPA has sought methodology for collection of monthly royalty on storage charges.

It is relevant here to state that the MOPSW letter dated 11 July 2018 prescribes clauses relating to royalty payment for rationalized storage charge during stressed project period. Hence, port and PPP Concessionaire are governed by the said MOPSW letter for payment of royalty during that period.

The MOPSW letter dated 11 July 2018 does not deal with periodicity of payment of royalty during the period when rationalised storage charges is approved by TAMP for stressed PPP project.

In the absence of elaboration in the MOPSW letter in this regard, the port may collect monthly royalty at the prescribed percentage quoted in the Concession Agreement on the actual storage charge recovered by the PPP Concessionaire.

The settlement of differential royalty, if any, payable by VGCBPL may be done annually as a year end exercise for ease and simplicity. The royalty paid on the actual storage charge recovered by the VGCBPL at the agreed percentage in the Concession Agreement may be compared with the indexed 1% of ARR from storage charge and differential i.e. shortfall, if any, may be paid by the VGCBPL to VPA . It is understood that DPA and MOPA also do this exercise annually for the stressed PPP project in their port. However, if the VPA and VGCBPL, mutually agree, this exercise may be done on quarterly or six monthly basis. For this 1% indexed ARR from storage charge may have to be considered proportionately for quarter or six months as the case may be.

- (vii). The VGCBPL has requested that for the future period also when the VGCBPL is not classified as a stressed project by VPA, 1% of indexed ARR pertaining storage charge or revenue share as per the Concession Agreement on the actual storage recovered by the PPP Concessionaire whichever, is higher may continue to be applied.

In this regard, it is to state that the present application filed by VPA relates to clarification on computation of revenue share payable by VGCBPL to VPA with reference to the rationalised storage charge approved by TAMP during the period of stressed project. As regards the point of VGCBPL, for the subsequent period i.e. after the stressed

project period is over, the VPA and operator may have to explore other options prescribed in the Concession Agreement. The VGCBPL may refer to the Conciliation and Settlement Committee constituted by the Indian Ports Association for conciliation and settlement of contractual disputes under contracts/ agreements or refer to the Major Ports Adjudicatory Board to be constituted by the Central Government under the Major Port Authorities Act, 2021.

12. In the result and for the reasons given above, and based on the collective application of mind, this Authority clarifies the following with reference to the application filed by VPA:

- (i). Annual Revenue Requirement from handling activity is to be taken at ₹137.06 crores as per the upfront tariff Order No.TAMP/58/2008-VPT dated 27.11.2009. 1% of the said ARR apportioned towards storage charge i.e. ₹1.3706 crores is to be taken as the base with the applicable annual indexation factor for computation of royalty payable by the VGCBPL for the stressed period for which rationalized storage charge is approved by this Authority.
- (ii). The Annual Revenue Requirement from storage charge as stated at (i) above after applicable indexation is to be considered irrespective of vessels, number of days or tonnage handled. Para 4 of MOPSW letter dated 11 July 2018 does not warrant adjustment of ARR on tonnage or number of days for computation of royalty payment during the stressed project period.
- (iii). The words "actual storage charge recovered" in the para 4(c) of MOPSW letter dated 11 July 2018 in literal sense means actual storage charge recovered by the PPP Concessionaire and not the rationalised storage charge as per TAMP Tariff Order.
- (iv). The royalty payable by the VGCBPL to VPA for the rationalized storage charge approved by this Authority during the stressed project period shall be 38.10% of revenue share as agreed in the Concession Agreement with VPA by the VGCBPL on the actual storage charge recovered by the VGCBPL; or, 1% of Annual Revenue Requirement from storage charge assessed at ₹1.3706 crores in the November 2009 Order after considering annual indexation factor based on annual indexation in tariff announced by TAMP, whichever is higher.

13. In view of the above, the subject matter is disposed of.


(T.S. Balasubramanian)
Member (Finance)