

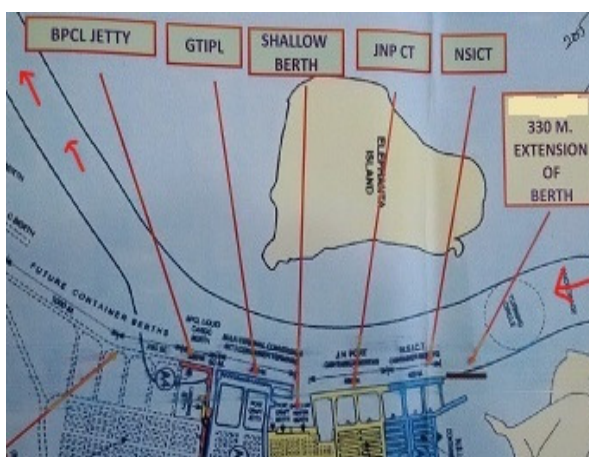
CHAPTER XIX : MINISTRY OF SHIPPING

Jawaharlal Nehru Port Trust

19.1 Revenue loss to Jawaharlal Nehru Port Trust (JNPT)

Award of an adjacent berth to the same entity operating the existing berth at a lower revenue share without safeguarding the financial interest of JNPT led to diversion of traffic from the existing to the new berth and consequent loss of revenue to the port. Over 2015-17, the loss of revenue amounted to ₹ 54.72 crore.

In July 1997, the Jawaharlal Nehru Port Trust entered into a license agreement with M/s Nhava Sheva International Container Terminal Ltd (NSICT) for operating a container terminal of berth length 600 m with a capacity of 1.2 million Twenty-Foot Equivalent Unit (TEU) for a period of 30 years. Subsequently, to cater to future container traffic, JNPT awarded (June 2013) a concession agreement to M/s Nhava Sheva (India) Gateway Terminal Pvt. Ltd (NSIGT) to develop and operate a container berth of 330 m north of and adjoining the existing NSICT terminal. The concession period for NSIGT terminal was 17 years.



Audit observed the following regarding operation of the two container terminals, NSICT and NSIGT:

- The new 330 m berth of NSIGT terminal was physically an extension of the existing berth of NSICT terminal. The Techno-Economic Feasibility Report (February 2007) for developing the stand-alone 330 m container berth had pointed out that it was likely that NSICT would emerge as the most preferred bidder for it as an additional, contiguous berth would add more value to it. The report had also highlighted that in the event NSICT operates both berths, it would be difficult to separately account for revenues earned from them which could have implications on assessment of revenue sharing with JNPT.

- JNPT had short-listed seven qualified bidders for the new terminal of 330 m berth length of which five collected the bid documents. Finally, only one bid was received and the concession for the new terminal was awarded to NSIGT. It is pertinent to note that both NSICT and NSIGT are wholly owned subsidiaries of M/s D P World Pvt. Ltd.
- As per the concession agreement (June 2013), NSIGT was to share 28.09 *per cent* of the gross revenues from operation of the new 330 m terminal with JNPT from the third year to the 17th year of operation. For the existing terminal, NSICT had to pay royalty to JNPT as per the license agreement (₹ 47 per TEU for the third year progressively increasing to ₹ 5,610 in the 30th year irrespective of tariff). In 2014-15, the royalty to be paid for NSICT terminal amounted to ₹ 2670 per TEU which at the applicable tariff rates in 2014-15 accounted for a revenue share of 79.92 *per cent* to JNPT. There was, thus, a sharp difference in revenue share payable to JNPT (79.92 *percent* on the existing NSICT terminal *vis-à-vis* 28.09 *per cent* on NSIGT terminal) on operation of the two adjacent terminals.
- The scheduled date of commissioning of the new terminal was 1 July 2016. In January 2015, NSIGT sought approval of JNPT for partial commissioning of the terminal facilities (60 meters out of the 330 meters). The concession agreement signed by JNPT with NSIGT did not permit commercial operation before completion of the terminal (July 2016). JNPT agreed to the proposal and a supplementary agreement allowing NSIGT to commence partial operation was drawn up in September 2015. It was noticed that the supplementary agreement was not signed by JNPT till March 2016. Yet, JNPT allowed NSIGT to commence operations at the partially commissioned terminal w.e.f. April 2015 without a formal agreement.
- While examining (September 2015) the supplementary agreement, Chairman JNPT raised an apprehension regarding NSIGT berth being used for handling vessels meant for NSICT since both terminals were under M/s DP World Pvt. Ltd. This concern and consequent loss of revenue to JNPT (in view of the considerably different revenue shares of 28.09 *per cent* and 79.92 *per cent* from NSIGT and NSICT, respectively) was also flagged by the Finance wing of JNPT. To address this concern, JNPT proposed to incorporate an additional clause in the supplementary agreement (November 2015) stipulating that in the event of transfer of vessels from NSICT to NSIGT, the

operator would pay royalty at the NSICT rate along with 30 *per cent* penalty thereon. NSIGT did not agree to this condition.

- The condition finally incorporated in the supplementary agreement (signed in March 2016) provided ‘...*the concessionaire shall berth the vessel only at the request of the customer and not shift any vessel in any arbitrary manner. The Concessioning Authority will be kept informed of any change in the terminal for vessel berthing*’ A legal opinion obtained by JNPT regarding incorporation of this clause pointed out that it would have no actionable effect for JNPT as the operator may exert influence on the berth preference of its customers and the information would come to the port post facto. It may be pertinent to mention that the concession agreement signed in June 2013 also did not specify any condition to deter diversion of vessel from NSICT to NSIGT.
- Meanwhile, NSIGT began trial operations in April 2015 and has continued operations since then. The traffic handled by NSIGT and NSICT over 2014-17 is depicted in **Table No. 1** below:

Table No.1: Traffic handled by NSIGT and NSICT

Year	NSICT (TEU)	MGT	NSIGT(TEU)	MGT	Total container traffic in JNPT
2014-15	11,60,220	6,00,000	Nil	NA	44,66,695
2015-16	9,99,680	6,00,000	2,02,328	1,00,000	44,91,568
2016-17	7,28,560	6,00,000	4,45,111	2,00,000	45,00,149

Audit noted that NSICT had been in operation since 1999-2000 and had handled traffic upto 1.54 million TEU with an annual average of 1.18 million TEU (over the period 1999-2000 to 2014-15, prior to operations of NSIGT). There was a sharp decline in traffic handled by NSICT once NSIGT terminal commenced operations.

- Audit also noted that the total container traffic at JNPT remained at ~ 4.5 million TEU over the period 2014-15 to 2016-17. NSICT alone had handled 26 *per cent* of the total JNPT traffic in 2014-15. In the subsequent years 2015-16 and 2016-17, NSICT and NSIGT together handled the same quantum of container traffic. The traffic at NSICT was thus being shared between NSICT and NSIGT with the share of traffic in NSICT on the decline and NSIGT achieving 200 *per cent* of the Minimum Guaranteed Traffic (MGT) in 2015-16 for a partially completed berth. The shift of traffic from NSICT to NSIGT has

continued in 2016-17 when the operation of NSIGT was covered by the concession agreement.

Over 2015-17, 0.647 million TEUs which could have been handled by NSICT were handled at NSIGT resulting in a loss of ₹ 54.72¹crore to JNPT on account of the difference between the royalty rate at NSICT and revenue share at NSIGT.

Management stated (October 2017) the following:

- The reduction of tariff of NSICT by TAMP² made them less enthusiastic to increase their productivity and throughput and that JNPT expected to add 0.8 million TEUs *per annum* capacity by way of this new berth. The port had considered NSIGT's request for early commissioning to retain the overall traffic at JNPT and avoid diversion of traffic to other ports.
- The Concession Agreements signed by JNPT with the terminal operators had no restriction on shifting of vessels from one terminal to another including shifting of vessels from any of the JNPT terminal to some other port. However, since TAMP rate was higher for NSIGT compared to NSICT, shifting of business would not happen.
- The supplementary agreement was prepared by a well-known lawyer and legal opinion was also obtained. The concessioning authority cannot insist upon the concessionaire (NSICT) to handle traffic beyond the MGT of 0.6 million TEUs stipulated in the concession agreement.
- The two concessionaires were independent legal entities and were expected to operate the berths independently.

The reply of the Management is not tenable.

- There has been no increase in traffic over 2014-17 as had been envisaged by JNPT. In fact, the existing traffic at NSICT terminal is being shared with NSIGT terminal to the financial detriment of JNPT.
- It was known as early as 2007 that there would be difficulties in separately accounting for revenues earned from the two contiguous

¹ Calculation based on difference between the Royalty rate and revenue share rate on the TEUs handled at the NSIGT terminal during the period April 2015 to March 2017.

² TAMP: Tariff Authority for Major Ports has jurisdiction over major port trusts and private terminals therein. It is responsible for prescribing the rates for services provided and facilities extended by them and also rates for lease of port trust properties.

berths if both berths are operated by the same entity. The concern regarding transfer of vessels from NSICT to NSIGT during operation of the adjacent berths and its adverse impact on the revenues of JNPT was also recognized while considering the supplementary agreement (September 2015). Considering the significant disparity in royalty from NSICT terminal and revenue share from NSIGT terminal to be received by JNPT, a suitable provision for safeguarding the financial interest of the port ought to have been included in the concession/supplementary agreements.

- The reply of the Port that the two concessionaires were independent legal entities who were expected to operate independently needs to be seen in the light of the fact that both NSICT and NSIGT were 100 *per cent* subsidiaries of DP World Pvt. Limited.

Thus, award of an adjacent terminal to the same operator without safeguarding the financial interest of JNPT led to diversion of traffic from the existing NSICT terminal (having a high royalty payment to the port) to the new NSIGT terminal (with a low revenue share with the port) and consequent loss of revenue to JNPT. Over 2015-17, such diversion resulted in loss of revenue of ₹ 54.72 crore to JNPT.

The para was issued to the Ministry in November 2017; its reply was awaited as of December 2017.

Mumbai Port Trust

19.2 Loss of revenue and undue benefit to the licensee

Mumbai Port Trust suffered loss of revenue of ₹ 17.13 crore during April 2015 to March 2017 as the Port failed to recover wharfage at the agreed rate from the licensee. Besides, the Port allowed revision of tariff at 130 *per cent* of scale of rates, without the approval of TAMP which was irregular.

Mumbai Port Trust (MbPT) entered (December 2007) into a License Agreement (LA) with Indira Container Terminal Private Limited (ICTPL) for development of two Offshore Container Terminals (OCT) on Build Operate and Transfer (BOT) basis with a revenue share of 35.064 *per cent* to MbPT. The project was expected to be completed by December 2010. However, there were delays on part of the PPP operator in obtaining security clearance from the Government for the equipment supplier and delays in financial closure as well as delays on part of the Port in completing their dredging commitment. Meanwhile, MbPT and ICTPL had incurred an expenditure of ₹ 416 crore (dredging cost) and ₹ 618.20 crore respectively (as on March 2017). MbPT had forwarded (March 2017) a proposal to Ministry of Shipping seeking

approval for revival of OCT by rebidding with changed cargo profile with Right of First Refusal to ICTPL, decision to which is awaited (December 2017).

Meanwhile, to avoid the idling of assets already created, the MbPT approved (January 2015) alternate use of the OCT berth for handling automobiles (car carriers). It was assessed that by shifting automobile traffic to OCT, MbPT would get additional berth days for handling additional ships carrying steel and other cargo. To ensure that the shifting of automobile cargo remained revenue neutral to the Port, MbPT worked out that it would be essential that ICTPL share 72 *per cent* of the revenue realized (berth hire and wharfage) with MbPT. This was to be an interim arrangement for a period of six months to be reviewed after three months.

ICTPL found the operation unviable with the revenue share of 72 *per cent*. On request of ICTPL, MbPT decided (May 2015) to increase the period of operation from six months to one year with tariff at 130 *per cent* of the prevailing Scale of Rates (SOR) of MbPT, subject to approval by Tariff Authority for Major Ports (TAMP). It was also decided that further increase in tariff (beyond 130 *per cent*) would not be considered for the purpose of revenue sharing. With the higher tariff, the revenue share of MbPT was fixed at 55 *per cent*³. On expiry of one year, MbPT (July 2016) allowed extension of the same arrangement for three months and subsequently (September 2016) further extended it till the time a decision on the revival of the project was taken.

In this connection, Audit observed the following:

1. The scale of rates (SOR) issued by TAMP for ICTPL stipulated that if a specific tariff for a service/cargo was not available in the notified SOR, an ad hoc rate could be levied while simultaneously submitting the proposal to TAMP. This ad hoc rate could be levied till TAMP finally notifies the rate. In this instant case, tariff for automobile cargo was not stipulated in the SOR of ICTPL. MbPT permitted ICTPL to levy tariff at 130 *per cent* of the prevailing SOR of MbPT (June 2015). ICTPL submitted (June 2015) the proposal to TAMP but withdrew the same (December 2015) on the ground that the project was in the process of being revived and a fresh proposal would be submitted once the revival process was completed. TAMP accordingly closed the case (February 2016). ICTPL, however, continued to collect berth hire charges at 130 *per cent* of the MbPT SOR (November 2017). MbPT

³ The revenue share of MbPT was decided as 72 *per cent*, however when ICTPL levied tariff at 130 *per cent* of SOR, the revenue share of MbPT worked out to 55 *per cent* only.

failed to ensure that ICTPL obtain TAMP approval for the adhoc tariff charged over more than two years.

2. The tariff comprised of two charges viz. berth hire charges and wharfage. ICTPL collected berth hire charges @130 *per cent* of MbPT SOR but collected wharfage at MbPT SOR rates. However, ICTPL shared only 55 *per cent* of the total revenues (berth hire and wharfage charges). Thus, the wharfage revenues were shared at a lower rate (55 *per cent* in place of 72 *per cent*) which resulted in under recovery of ₹ 17.13 crore during April 2015 to March 2017. The port thus failed to secure its financial interest while permitting interim operations by ICTPL, leading to undue benefit to the licensee.
3. The arrangement between MbPT and ICTPL allowing automobile traffic to be handled by ICTPL was an interim one. Ministry of Shipping had advised MbPT to take a legal opinion on the permissibility of the interim arrangements under the license agreement. Accordingly, MbPT obtained a legal opinion (from the Attorney General of India) which suggested that an amendment to the license agreement should be executed. This was not done by MbPT.
4. MbPT had allowed ICTPL to operate another berth, Ballard Pier Station, as per the license agreement. ICTPL operated this berth for five years (from 2008-09 to 2012-13) and defaulted payments on account of license fee (₹ 30.37 crore) and revenue share (₹ 15.47 crore) resulting in outstanding dues (September 2017) of ₹ 45.87 crore of MbPT. This aspect had been highlighted in the Performance Audit Report on PPP Projects in Major Ports (Para 5.4 of Report No. 49 of 2015).

Management stated (October 2017) that the conclusion drawn by Audit that ICTPL is gaining an undue financial benefit is incorrect since ICTPL is sharing 55 *per cent* of the revenue as against 35.064 *per cent* envisaged in the original license agreement. Management also stated that it is pursuing sharing of wharfage charges at 72 *per cent* with ICTPL. It was also highlighted that the arrangement was an interim one and no separate agreement for this arrangement was necessary.

The reply is not acceptable in view of the following:

- ICTPL continues to collect berth hire charges @ 130 *per cent* without the approval of TAMP which is irregular.

- The basis for the interim arrangement was revenue neutrality for the Port. The Port had assessed that for revenue neutrality, a share of 72 per cent of the revenues collected by ICTPL was essential which has been breached by the licensee.
- The legal opinion was obtained on the advice of the Ministry of Shipping. However, the Port did not act in line with the legal advice.

The decision to permit ICTPL to charge tariff at 130 per cent of SOR without the approval of TAMP led to undue benefit to the licensee for over two years. Also the port failed to secure its financial interest and achieve revenue neutrality as wharfage was being shared at a lower rate (55 instead of 72 per cent), which resulted in revenue loss of ₹ 17.13 crore to MbPT during 2015-17.

The para was issued to the Ministry in November 2017; its reply was awaited as of December 2017.

19.3 Loss of revenue due to failure to revise casual occupation and service charges

Mumbai Port Trust failed to revise casual occupation charges and service charges since 1990-92 which led to loss of revenue to the port. Considering the revised charges proposed by the port in May 2002, the loss amounted to ₹ 15.10 crore (approx) during April 2012 to March 2017. The loss would continue till the Port takes necessary steps to revise these charges.

Mumbai Port Trust (MbPT) levies charges/penalties for services it provides. These levies were governed by the MbPT General Bye Laws. Three of these charges viz. parking charges, casual occupation charges and service charges are of recurring nature which have not been revised since they were fixed in 1990-92.

- (i) Audit observed that casual occupation charges are being levied in three divisions of MbPT, viz. Railways, Estate and Traffic divisions at rates fixed in June 1990. Scrutiny of records of the Railway Division of MbPT revealed that the port had levied casual occupation charges at Grain Depot and Victoria Dock railway stations (having ~35000 square meter storage area) at ₹ 1.50 per square meter per day for first 15 days and ₹ 2 per square meter per day thereafter. These charges have not been revised since June 1990. The Board of Trustees decided (May 2002), after a long spell of 12 years to revise the casual occupation charges based on the market value of land published by the State Government with return at five per cent per annum thereon. Accordingly, MbPT sent a proposal (August 2002) to Ministry of Shipping (MoS) to revise the rates for casual occupation of the sheds

as ₹ 3.50 per square meter per day for first 15 days and ₹ five per square meter per day thereafter. After protracted correspondence, MoS informed (June 2010) that the Major Port Trusts Act, 1963 did not permit amendment to Bye-Laws and directed MbPT to replace the existing Bye-Laws with fresh regulations urgently. The Port, however, failed to finalize the regulations even after seven years (December 2017) after directions of MoS and consequently, the casual occupation charges continue to be charged at the rate fixed in June 1990.

- (ii) It was also observed that MbPT levies (July 1992) service charges at the rate of 50 paise per sqm./month on all port trust plots/structures served with and/or surrounded by port trust roads and passages. The charge was intended to cover the cost of maintenance of port trust roads, passages, lighting and other facilities provided, from the occupants to whom the plot/structure have been given on lease or on tenancy basis. The Board of Trustees decided (May 2002) to revise the service charges to ₹ one per sqm. per month based on the average annual expenditure incurred on maintenance of such area by the Port. Accordingly, MbPT sent (August 2002) a proposal for revision of service charges to Ministry of Shipping and Ministry directed the replacement of existing Bye laws with Regulations. Pending the finalization of regulations, service charges continue to be charged at the rates fixed in 1992.
- (iii) The non-revision of parking charges was commented in Para 19.1 of C&AG Report No.12 of 2017.

The loss of revenue to the port due to non-revision of casual occupation charges, considering minimum rate of ₹ 3.50 per square meter for first 15 days as proposed by MbPT for revision in August 2002, worked out to ₹ 8.19 crore for the period April 2012 to March 2017⁴ for the Railway Division alone. In the absence of details in respect of the Estate and Traffic divisions, the total impact of loss of revenue could not be worked out in Audit. The port also suffered loss of revenue to the extent of ₹ 6.91 crore (approx) due to non-revision of service charges during April 2012 to March 2017.

MbPT while not offering any comments for non-revision of these charges for such a long period stated (August 2017) that a proposal for revision of General Bye-Laws in the matter is being taken up. MbPT also stated that the rates of casual occupation charges were more or less comparable between various ports.

⁴ Allowing a reasonable period of nearly two years (June 2010 to March 2012) to the Port to bring in fresh regulations after the Ministry's directions.

The reply is not acceptable as MbPT had themselves proposed (May 2002) for revision of these charges. Besides, the charges levied by MbPT cannot be compared with those levied by other Major Ports due to difference in geographical locations and costs of localities. Further, MbPT did not replace the Bye-laws with regulations even after a lapse of seven years though MoS directed (June 2010) to replace the existing Bye-Laws with fresh regulations urgently.

Thus, failure of the port to revise casual occupation charges at Railway division and service charges resulted in loss of revenue of ₹ 15.10 crore (approx) (April 2012 to March 2017). The loss of revenue would continue till the Bye-laws are replaced with fresh regulations.

The para was issued to the Ministry in September 2017; its reply was awaited as of December 2017.

V.O. Chidambaranar Port Trust

19.4 Avoidable payment of compensation charges for Low Power Factor

Failure to maintain prescribed power factor resulted in avoidable payment of compensation charges amounting to ₹ 1.46 crore.

Tamil Nadu Electricity Regulatory Commission (TNERC) (March 2012) stipulated that Average Power Factor⁵ (APF) of the consumer installations in respect of High Tension (HT) service connection shall not be less than 0.90. In case the average power factor is less than the stipulated limit of 0.90, compensation charges will be levied. Indian Electricity Grid Code (IEGC) also stipulated that it shall be obligatory on the part of the consumer to generate adequate reactive power at his load end so as to maintain stipulated Power Factor (PF) in the network. Further, regulation 13(3) of Tamil Nadu Electricity Distribution Code (TNEDC), 2008 provided that it shall be obligatory on the part of the consumer to improve the power factor of their connected loads to the required level in accordance with the provisions made in this code.

V.O. Chidambaranar Port Trust (Port) had been receiving 22 KV High Tension (HT) power supply from 230/110KV Auto substation near Muthiapuram, Tuticorin with maximum demand of 3500 KVA per month. As the port was not maintaining the stipulated PF level of 0.90, Tamilnadu Generation and Distribution Corporation Limited (TANGEDCO) started

⁵ Power factor means the ratio of the real power to the apparent power. Apparent power (measured in Kilo Volt Ampere) is the vectorial summation of real power and reactive power. Real power (measured in Kilo Watts) is the power that actually powers the equipment and performs useful work. Reactive power is the power that magnetic equipment needs to produce the magnetizing flux.

levying compensation charges from November 2012. In order to avoid compensation charges, the port conducted Harmonic analysis test (2013) through M/s Edge Technologies, Hyderabad, which recommended to install active harmonic filters with neutral compensation and to avoid leading PF⁶. On analyzing the HT bills and the Harmonic analysis test report, the port decided (February 2014) that as the installation of compensating equipment at all the substations would be expensive, harmonics compensation equipment at major load centers would be installed. Accordingly, the port installed (December 2015) Automatic Power Factor Correction (APFC) Panels with seven *per cent* detuned harmonics filter at seven locations at a cost of ₹ 20.35 lakh.

Audit observed that even after installing APFC panels in December 2015, the PF did not improve as expected and ranged between 0.76 and 0.88, during January 2016 to July 2017. The port did not conduct performance appraisal of the installed equipment and also did not identify other locations where APFC panels were required to be installed, and therefore failed to take further corrective measures to improve the power factor. Consequently, it had to pay a penalty of ₹ 1.46 crore as compensation charges during the aforesaid period (January 2016 to July 2017).

The Port in its reply (August 2017) stated that (a) increase in non-linear loads like personal computers, CFL, UPS and induction loads like high power induction motor at water sprinkler system were some of the main causes for reducing PF as the level of PF depends on the type of loads, (b) the PF was varying due to variable load as the cranes/equipment could not be utilized by the Port/Public Private Partnership operators at all the time in constant load, (c) the Port installed APFC panels for PF improvement at seven locations and all port users were insisted to install APFC panels and penalty were imposed on them for non-compliance, (d) the electricity units consumed shall increase when PF is maintained at 0.90 and (e) it had taken necessary steps to improve PF in the Port feeders and based on the installations of APFC panels, PF would be improved in the ensuing months.

The reply of the Port needs to be viewed against the following facts (i) Maintenance of PF at 0.9 level was a statutory requirement, (ii) Though Port conducted harmonic analysis test and PF studies and had incurred ₹ 20.35 lakh for installing APFC panels, there was no improvement in PF. The Port neither measured the performance of the installed APFC panels nor identified other locations for installing more APFC panels, (iii) The port has not conducted energy re-audit which could have facilitated corrective actions,

⁶ When current leads the voltage (or voltage lags behind the current), the power factor is called 'leading'. A leading power factor signifies that the load is capacitive, as the load supplies reactive power.

(iv) The inference that consumption of electricity units would increase if PF is maintained at the prescribed level of 0.90, was based on presumptive readings/mathematically derived units. Besides, compensation charge was a penalty levied as a measure of punishment for non-compliance of statutory requirement, whereas electricity consumption charge is a levy on units actually consumed.

Thus, the Port's failure to comply with statutory requirement of maintenance of PF at 0.9 level resulted in payment of avoidable compensation charges amounting to ₹ 1.46 crore.

The Ministry in its reply (November 2017) stated that the port has now awarded work order to install energy monitoring devices in the distribution areas around 10 km to monitor the load distribution among the port users.

The performance of these devices in maintaining stipulated PF of 0.90 would be reviewed in future audit.