

**LOSS OF REVENUE AND UNDUE BENEFIT TO THE
LICENSEE - MUMBAI PORT TRUST**

MINISTRY OF PORTS, SHIPPING AND WATERWAYS

**PUBLIC ACCOUNTS COMMITTEE
(2023-24)**

HUNDRED AND FIFTH REPORT

SEVENTEENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

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Presented to Lok Sabha on: 08-02-2024

Laid in Rajya Sabha on: 08-02-2024

LOK SABHA SECRETARIAT
NEW DELHI

February 2024/ Magha 1945 (Saka)

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*Not appended to the Report

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE

(2023-24)

Shri Adhir Ranjan Chowdhury - Chairperson

MEMBERS

LOK SABHA

2. Shri Subhash Chandra Baheria
3. Shri Thalikkottai Rajuthevar Baalu
4. Shri Bhartruhari Mahtab
5. Shri Jagdambika Pal
6. Shri Pratap Chandra Sarangi
7. Shri Vishnu Dayal Ram
8. Shri Rahul Ramesh Shewale
9. Shri Gowdar Mallikarjunappa Siddeshwara
10. Dr. Satya Pal Singh
11. Shri Brijendra Singh
12. Shri Rajiv Ranjan Singh alias Lalan Singh
13. Shri Jayant Sinha
14. Shri Balashowry Vallabhaneni
15. Shri Ram Kripal Yadav

RAJYA SABHA

16. Shri Shaktisinh Gohil
17. Dr. K Laxman
18. Shri Derek O'Brien*
19. Shri Tiruchi Siva
20. Dr. M. Thambidurai
21. Shri Ghanshyam Tiwari
22. Dr. Sudhanshu Trivedi

SECRETARIAT

1. Shri Sanjeev Sharma - Joint Secretary
2. Shri Partha Goswami - Director
3. Shri Alok Mani Tripathi - Deputy Secretary
4. Shri Vijay Mishra - Committee Officer

*Elected w.e.f. 19.08.2023 consequent upon retirement of Shri Sukhendu Sekhar Ray, MP on 18.08.2023.

INTRODUCTION

I, the Chairperson, Public Accounts Committee (2023-24) having been authorized by the Committee, do present this Hundred and Fifth Report (Seventeenth Lok Sabha) on **“LOSS OF REVENUE AND UNDUE BENEFIT TO THE LICENSEE - MUMBAI PORT TRUST”** based on para 19.2 in Report No. 4 of 2018 relating to the Ministry of Ports, Shipping and Waterways.

2. The Report of Comptroller and Auditor General of India was laid on the Table of the House on 04-04-2018

3. The Public Accounts Committee (2022-23) took oral evidence of the representatives of Ministry of Ports, Shipping and Waterways on 31-10-2024. The Committee considered and adopted this Report at their sitting held on 05-02-2024. The Minutes of the sittings of the Committee are appended to the Report.

4. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in bold and form Part-II of the Report.

5. The Committee would like to express their thanks to the representatives of the Ministry of Ports, Shipping and Waterways for tendering evidence before them and furnishing the requisite information to the Committee in connection with the examination of the subject.

6. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the Committee Secretariat and the Office of the Comptroller and Auditor General of India.

NEW DELHI
05 February, 2024
16 Magha, 1945 (Saka)

ADHIR RANJAN CHOWDHURY
Chairperson,
Public Accounts Committee

REPORT

Part - I

The Committee have learnt that Audit in Para 19.2 in Report No. 4 of 2018 in respect of Mumbai Port Trust (MbPT) revealed significant financial irregularities and operational lapses in its License Agreement with Indira Container Terminal Private Limited (ICTPL). Between April 2015 and March 2017, MbPT suffered a revenue loss of ₹17.13 crore due to the failure to recover wharfage at the agreed rate from ICTPL. Additionally, the Port also allowed a tariff revision at 130% of the scale of rates without the necessary approval from the Tariff Authority for Major Ports (TAMP), which is an irregular practice.

2. The License Agreement, initiated in December 2007 for the development of Offshore Container Terminals (OCT) on a Build Operate and Transfer (BOT) basis, experienced delays attributed to security clearance issues, financial closure delays, and dredging commitment delays. Despite incurring significant expenditures (₹416 crore for MbPT and ₹618.20 crore for ICTPL), the project completion was prolonged, and a revival proposal which was submitted to the Ministry of Shipping in March 2017 was kept pending for want of approval as of December 2017.

3. A critical audit observation pertained to the interim use of OCT for handling automobiles, approved by MbPT in January 2015. To ensure revenue neutrality, MbPT had proposed that ICTPL share 72% of the revenues for a six-month interim period, but ICTPL found this operation unviable. Consequently, MbPT allowed an extension of operations for over two years, with ICTPL charging a tariff at 130% without TAMP approval, leading to undue financial benefit to ICTPL.

4. The revenue-sharing arrangement, consisting of berth hire charges and wharfage, further demonstrated discrepancies. While ICTPL collected berth hire charges at 130% of MbPT rates, it shared only 55% of the total revenues (berth

hire and wharfage charges), resulting in an under-recovery of ₹17.13 crore during April 2015 to March 2017.

5. Moreover, the audit has also highlighted non-compliance with legal advice sought from the Attorney General of India regarding the interim arrangement. Despite the Ministry of Shipping advising MbPT to obtain a legal opinion, no amendment to the license agreement was executed.

6. Finally, the Audit in their findings has also noted that the management's response, asserting that ICTPL shares 55% revenue against the original 35.064% envisaged, was deemed unacceptable by the audit. The audit emphasized the non-approval of ICTPL's 130% tariff by TAMP, breach of revenue-sharing basis, and failure to act on legal advice.

7. Audit has tried to establish that the decision to permit ICTPL to charge a tariff at 130% without TAMP approval resulted in undue benefit to the licensee, and MbPT failed to safeguard its financial interests. The revenue-sharing discrepancies led to a substantial revenue loss of ₹17.13 crore during 2015-17.

8. The collection of berth hire charges at the Indira Container Terminal occurred at 130 per cent of the scale of rates without approval for two years. Additionally, cargo-related charges were collected based on the Schedule of Rates (SOR), but the agreed-upon revenue sharing of 72 per cent was not adhered to; instead, it was continued at 55 per cent. As a result, there was a failure to amend the agreement for alternate cargo by the Mumbai Port, leading to payments default. Asked to explain the reasons for the less revenue sharing, the representative of the Mumbai Port Trust during the oral evidence stated as under:

"There is a serious contractual dispute between the licensee and Mumbai Port. The first observation is regarding non-approval of the revised rate by TAMP. But the stated position is that that TAMP by order dated 11th September, 2018 had notified the ad-hoc for berth hire charges at 130 per

cent of the berth higher charges of MBPT. This rate is applicable retrospectively from 20th July, 2015. So, it was approved by TAMP retrospectively and this approval was given till 31st March, 2021."

9. When asked to justify the collection of berth charges at the rate of 130 per cent of Mumbai Port Trust scale of rates by ICTPL along with the reasons given by ICTPL to share only 55 per cent of berth charge while 72 per cent was to be shared with Mumbai Port Trust, the representative of the Mumbai Port Trust while tendering oral evidence stated as under:

"The Licensee, M/s. ICTPL has stated that it is not economically viable for them to share @ 72 per cent. However, this has not been accepted by the Port and we have been demanding the revenue share of 72 per cent. This difference is a part of the counter claim filed in arbitration by Mumbai Port."

10. The examination of the subject further revealed that the arrangement between the Port and the ICTPL allowing automobile traffic to be handled by ICTPL was an interim one. Minister of Shipping had advised Mumbai Port Trust to take a legal opinion on the interim arrangements under the License Agreement. Accordingly, Mumbai Port Trust 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 the Mumbai Port Trust. Asked to furnish the reasons as to why despite the legal opinion, the Mumbai Port Trust did not take any action for an amendment to that agreement, the representative of the MbPT replied as under:

"It is still an interim arrangement. There is a provision in the License Agreement referring to Article 26.9 for making changes in the existing license agreement and MBPA ensure mutual consent by exchange of letters between the two parties for interim arrangement of operations. However, a permanent arrangement for change of cargo profile making amendment without re-bidding would not be transparent.

Explaining the reasons for obtaining the legal opinion, he further added :

"The matter was very complicated one and a solution needed to be arrived at that time, so that the interest of the trade and Port are also protected. Otherwise Port was going into losses during those years."

11. When asked to furnish the reasons as to why, despite the Ministry of Shipping advising MbPT to obtain a legal opinion, why no amendment to the license agreement was executed, the representative of the MbPT replied as under;

"It is still an interim arrangement, and we are trying to resolve it through arbitration continuously."

When presented with the fallacy in the statement that Interim arrangement cannot go on for years, the representative of the mbPT stated as under:

"Not exactly, Sir. We are trying to solve it in all earnestness because even we do not want such kind of interim arrangements to go on for long. That asset also cannot be led to remain idle for a long time. If at all we decide to stop this complete arrangement, then the trade will be severely affected in that area."

12. When asked whether any techno-economic feasibility study of the project for development of two Offshore Container Terminals (OCT) on Build Operate and Transfer (BOT) basis was undertaken, the Ministry in a written reply stated as under:

"In 1998, JICA (Japan International Co-operation Agency) under the Bilateral Agreement between Govt. of India & Govt. of Japan prepared a Master Plan for development of Mumbai Port. M/s. JICA suggested the development of Offshore Container Terminal. The site was selected by them and concurred by CWPRS Pune. Thereafter, a detailed feasibility study was carried out by the MbPA through Consultancy firm M/s

Consulting Engineering Services (India) Pvt. Ltd. (M/s CES). The feasibility report was premised inter-alia on the following:

- a) Container traffic forecast for the Mumbai Port along with western coast ports and All India container traffic forecast.
- b) Existing facilities and container handling capacity at Mumbai Port,
- c) Proposed capacity additions at nearby ports.
- d) Advantages of Mumbai Port in attracting the traffic.
- e) Analyses of the costs, finances and revenue for the proposed OCT."

13. Asked to justify the rationale for incurring an expenditure of Rs.416 crore (dredging cost) and Rs.618.20 crore by Mumbai Port Trust and ICTPL respectively (as on March 2017), the Ministry of Port, Shipping and Waterways in a written reply stated as under:

"In 1998, Japan International Co-operation Agency (JICA) under the Bilateral Agreement between Government of India & Government of Japan prepared a Master Plan for development of Mumbai Port wherein it had recommended the construction of Offshore Container Berths in order to cater to the need for Mumbai Region requirement. The detailed feasibility report for the project was prepared in 2005. The detailed feasibility study report envisaged an IRR of 22.76% & equity IRR as 31.20% with overall project IRR as 20.70%. The Mumbai Port Trust (MbPT), pursuant to a competitive bidding process, entered into a License Agreement on 03rd December, 2007 with Indira Container Terminal Private Limited. Government approval received in November 2007. As per the License Agreement, the scope of work of ICTPL, as Licensee, included execution of the work comprising development of off-shore jetty, development of approach trestle, development of container yard, equipment, utilities and buildings (Project) and the scope of work of

MbPT, as Licensor, included filling of Princes and Victoria Docks, construction of Rail Container Depot, dredging in berth Pocket, approach Channel and Turning Circle. Accordingly, MbPT & ICTPL has incurred expenditure on their scope of works to fulfil their obligations as per the Agreement."

14. In regard to the factors that were taken into account by Mumbai Port Trust before moving the proposal to Ministry for revival of OCT by rebidding with changed cargo profile with Right of First Refusal to ICTPL the Ministry of Ports, Shipping and waterways in a written reply stated as under:

"As there was a delay in completion of various activities in the project, the Project has been declared as Non-Performing Asset (NPA) by the lenders to the Project. The OCT Project is at a standstill since around June 2013. To make the idle assets operational, MbPT decided to allow handling of Ro-Ro as an interim measure in January 2015. Considering the long delay in the commissioning of the project (Stalled Project), the Principal Secretary to the Hon'ble Prime Minister had convened a meeting with Ministry of Shipping, Mumbai Port Trust, BOT Operator, M/s. ICTPL and the Lead Bankers of Lenders M/s. Canara Bank Ltd. to discuss the Way Forward of the project on 17.08.2015. Further a meeting of lenders, ICTPL, Ministry of Shipping Officials and MbPT was held in the Ministry of Shipping on 19.08.2016 under the Chairmanship of Hon'ble Minister of Shipping, Road & Transport. In the said meeting various options including the option of termination was discussed in respect of the future of the project. It was noted that in case of termination, the liabilities on the Port could be very high and it could lead to prolonged litigation. After prolonged discussions, it was agreed to go ahead with the option of rebidding of the Project with ROFR (Right of First Refusal) with M/s ICTPL. As changing the cargo profile amounted to change in conditions in the License Agreement, it was referred to the Ministry."

15. When asked to explain the delay in completing the offshore container terminal (OCT) project, which was expected to be completed by December 2010, the Ministry of Ports, Shipping and waterways in a written reply stated as under:

"The delay is attributable to both the parties. The Project have been delayed due to various reasons as given below:-

- i) Achievement of financial closure was delayed by Licensee which led to delay in the evaluation and finalization of loan agreement by the lenders (consortium of banks) led by Canara Bank Ltd.
- ii) Commencement of construction by Licensee was delayed due to delay in achievement of financial closure and finalization of EPC contractor thereof.
- iii) Completion of civil works, berths etc was delayed due to delay in financial closure, commencement, delay in handing over of berth pocket for piling after completion of capital dredging and delay in completion by EPC Contractor.
- iv) Procurement of equipments for container handling by concessionaire was delayed due to delay in completion of work and delay in getting security clearance for manufacturers
- v) There were delays due to achieving required dredged depth by the contractor engaged by the Port to hand over to BOT operator. Due to failure of contractor, the contract has been terminated with effect from 23.6.2013.

Due to default by concessionaire in servicing loans, the project has been declared NPA by the banks and hence works stopped for want of funds in 2013."

16. Explaining the rationale behind allowing the alternate use of the OCT berth for handling automobiles (car carriers) in January 2015, and the decision made to ensure revenue neutrality for the port, the Ministry of Ports, Shipping and waterways in a written reply stated as under:

"... the OCT could not be constructed within the stipulated period. Even till this date, the entire project is not completed. The project is declared as NPA in 2013. However by 2013, the project reached a stage where it was capable of handling some functions. ICTPL, at this juncture, started requesting MbPT to allow it to use the OCT for Roll-on, Roll-off Services ("RO-RO"). During the relevant period, the Mumbai Port was handling RoRo and Steel. It was felt that since, such a project of national importance remained idle, it would be appropriate to put to some use. Since, the port was handling RoRo the diversion would have meant loss of revenue to the port, hence, the Revenue neutrality was considered. It was also envisaged that in the space that would be available due to the handling of the RoRo, it would increase the handling capacity of the port especially with respect to the steel cargo. The additional cargo would lead to additional revenue to the port. These were some of the rationale for allowing the alternative cargo.

Traffic Department had analysed the additional traffic of steel vessel handled at outer berths of Indira Dock and concluded that 16 steel vessels have been handled by MbPT during the period from 20.7.2015 to 31.3.2016 on account of release of berth capacity consequent to handling of Ro-Ro/Steel vessels at OCT. The revenue neutrality position of the operations during the period was placed before Board and by Resolution no. 38 of 29.7.2016 after considering the assessment, approved further extension. Further by Board Resolution no. 59 of 28.9.2016, the extension in arrangement was granted till the final decision is taken about the restructuring of OCT Project.

It is to submit that MbPT till now has received a revenue share of Rs. 394 Cr and additional revenue of Rs. 230.94 Cr from pilotage and port dues from the vessels docked at OCT, thus totalling to Rs.624.94 crore as against the capital investment of Rs.416 crore incurred by port."

17. When asked whether approval of the Tariff Authority of Major Ports (TAMP) was taken by Mumbai Port Trust before allowing ICTPL to collect berth charges at 130 percent of the prevailing Scale of Rates the Ministry of Ports, Shipping and waterways in a written reply stated as under:

"The port while allowing to charge 130% had asked the concessionaire to obtain approval of the TAMP. The concessionaire had approached the TAMP for revision which was notified subsequently."

18. Explaining the rationale behind increasing the period of operation from six months to a year and subsequent extensions till the time a decision on reviving the Project, the Ministry of Ports, Shipping and waterways in a written reply stated as under:

"...Allowing the use of OCT was also beneficial to the port users as well. This was also a consideration for allowing the extensions from time to time. ... the asset would have otherwise remained idle. These were the rationale for extensions. Incidentally, the port has received Rs. 394 crores from 26.10.2015 to 31.03.2023 excluding the disputed amount for alternative arrangement. Further as stated above additional revenue of 230.94 Cr from pilotage and port dues from the vessels docked at OCT, thus totalling to Rs.624.94 crore as against the capital investment of Rs.416 crore incurred by port."

PART-II

OBSERVATIONS/RECOMMENDATIONS

The Committee find that 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, the Committee learn that the delays were apparent 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. The Committee note with concern that the substantial revenue loss of ₹17.13 crore incurred by Mumbai Port Trust (MbPT) between April 2015 and March 2017 is evidently due to the failure to recover wharfage at the agreed rate from ICTPL. In light of this, the Committee would like to recommend that MbPT undertakes swift measures to rectify the financial irregularities, recover the losses, and institute stringent measures to ensure proper adherence to agreed-upon rates. This may involve a comprehensive review of financial processes, invoicing systems, and recovery mechanisms.

2. From the replies furnished by the Ministry in response to the Audit findings, the Committee observe that there has been a critical irregularity wherein the Port allowed a tariff revision at 130% without obtaining necessary approval from the Tariff Authority for Major Ports (TAMP). To address this lapse, the Committee would like to recommend that MbPT ensure that all tariff revisions are subjected to the requisite regulatory approvals from TAMP before implementation. This will not only uphold transparency but also safeguard against potential financial and regulatory implications.

3. The Committee recognize the delay in completing the Offshore Container Terminals (OCT) project, attributed to security clearance issues, financial closure delays, and dredging commitment delays. To mitigate the adverse impact on revenue and operational efficiency, the Committee recommend that MbPT takes immediate and effective measures to expedite the project's completion. The Committee would like to recommend undertaking a time bound and proactive resolution of security clearance issues. Further, the Committee would also like to suggest streamlining the

financial closure processes. The Committee also find that dredging commitments are not being met in a time bound manner, and no plausible reasons are advanced for the same. They would therefore, emphasise on MbPT endeavoring to meet the dredging commitments, which is their primary responsibility.

4. The Committee emphasize the importance of legal compliance and note the failure to execute amendments to the License Agreement despite legal advice. To rectify this, the Committee recommend that MbPT promptly acts on legal advice, amend the agreements as may be necessary , and ensure full compliance with legal procedures. This may include engaging in transparent communication with ICTPL to resolve any outstanding legal complexities and disputes.

5. The Committee underscore the significance of transparent communication and negotiation, particularly in the context of revenue-sharing disputes and tariff-related matters with ICTPL. To foster a collaborative approach, the Committee recommend that MbPT actively engages in transparent communication, negotiations, and dispute resolution/mitigation mechanisms. This involves, participating in arbitration proceedings and exploring all legal options to resolve the issues efficiently and safeguard the interests of all stakeholders.

NEW DELHI
05 February, 2024
16 Magha, 1945 (Saka)

ADHIR RANJAN CHOWDHURY
Chairperson,
Public Accounts Committee
